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TECHNOLOGY AND POLITICAL BOUNDARIES

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Mankind is sectional in outlook, carving the world into little compartments with mile upon mile of boundary lines. Technology, on the other hand, is inherently universal in outlook; nature's laws operate as infallibly in Spain as in China, in Russia as in Australia. The substances which it uses are scattered widely over the earth without respect for human conventions. In the collection of raw products and the transportation of finished goods, its purposes are economic, not political. The engineer, then, in applying his rational skill to the world's haphazard system of political areas must necessarily cut across artificial regions with a variety of works. The railway needs no introduction as a map-slashing agency. It has pierced the Alps, connecting Switzerland and Italy by way of the famous Simplon tunnel; it has crossed the towering Andes, linking Argentina with Chile; it has stretched out through Siberia, tying China and the Pacific with the countries of western Europe; and it speeds the traveller through a veritable maze of Balkan nations. Electrical designers, creating superpower nets of transmission lines, run wires with utter abandon across national and local frontiers, joining Switzerland and France over the Alps in one net, and North Carolina, South Carolina, Georgia, Alabama, and Tennessee in another. The production manager, turning out automobiles, airplanes, watches, and a flood of other commodities, seeks to distribute his products in every clime and under every flag. The engineer,

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in short, is a universalist, however intense his patriotism, and cannot function efficiently without traversing human boundary lines.

The political boundaries so generally crossed are far from being mere imaginary lines. They represent crucial limits where a change of jurisdiction from one nation or administrative subdivision to another occurs. Such a change involves substantial shifts in law, governmental control, language, race, and outlook. And none of these alterations is remote from the enterprises of the engineer. Twist and turn as he will, he cannot escape them.

Even such an innocent enterprise as railway design is hopelessly ensnarled with border problems. Railway cars run on rails spaced a specific distance apart. This distance is the "gauge." Obviously, cars built with wheels to fit one gauge are quite useless on another. Unfortunately, gauge is still a subject for local option. While the standard gauge in general use in Europe is 4′ 8½″, Spain and Portugal dissent with a gauge of 5′ 5¾″ and Russia, "for national defense," uses 5′ 0″ to prevent foreign trains from invading her territory during a war. Even the administrative divisions of a single country may have diverse tastes. In Australia, eight different gauges are used, the colony of New South Wales, for example, employing 4′ 8½″, Victoria 5′ 3″, and Queensland 3′ 6″. So to the operator of an international, or even a local, railway, faced with the necessity of moving passengers and freight over a confusion of track widths, national "gauge prejudice," coterminous with political boundaries, is an engineering reality.

Large outdoor construction jobs, such as railways, waterworks, and power projects, are not the only engineering enterprises affected by national, state, and local lines. Even machine design suffers from boundary complaint. An excellent illustration in this field is afforded by the situation in the manufacture of automobiles. Since the several countries have independently adopted formulas for horse-power as the basis for automobile taxes, they are minimized by special contriv-

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ance. Thus in the British Isles, where auto taxes are based solely on the diameter of cylinders, mechanical experts plan engines with abnormally long cylinders having a small taxable diameter. In other countries, where both length and diameter are employed as the tax base, there is a general adoption of shorter cylinders, which are mechanically more efficient. As a result, the British engine lags behind engines built elsewhere in the effectiveness of its performance, and Sir Percival Perry, president of Ford, Ltd., must speak of the British industry, somewhat bitterly, in the following vein: "We have to manufacture a special automobile engine for export because no intelligent automobilist will accept an engine designed according to the horse-power formula upon which British taxation is based. . . . So long as the present method of calculating horse-power taxation prevails, no British manufacturer can possibly build up any considerable export business in the vehicles which are made for this market. . . . Holland, which imports all its motor cars, is an open market in which twenty-three Continental and American manufacturers each sell 500 or more of their vehicles per annum. Not one of these is a British manufacturer."[1]

Instances abound of the conflict between technology in all its branches and political frontiers. This is inevitable; for a survey of the origins of national and local boundaries conclusively shows that most of their roots lie, not in science and invention, but in human habits far antedating the industrial revolution. The most conspicuous of these historic roots is national defense. Seeking the aid of nature in protecting themselves against invasion, political entities have separated themselves from their neighbors by "natural" barriers. Mountains are of this class. The fearlessness and independence of mountaineers is a matter of record. That confidence in mountains as a deterrent to the advance of enemies has not been misplaced is demonstrated by the perils which Hannibal encountered in crossing the Alps to attack Italy in 218 B.C. "When . . . he began the ascent of the Alps the real dif-

[1] *New York Times*, April 26, 1931, § 9, p. 6.

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ficulties of his journey appeared; for the way was narrow and rough, and the mountaineers attacked him. From the higher ground, which secured their own safety, they rolled stones and hurled missiles upon the troops and upon the long train of pack animals. Many soldiers fell, and many beasts of burden were either disabled or lost, so that the army suffered for want of provision."[2] At length, with great toil and heavy losses, Hannibal reached the summit, undoubtedly convinced, as his successors have been even to this day, that mountains form a real basis for political dividing lines.

But the very force of gravity which, two thousand years ago, drew down upon the heads of Hannibal's men, with merciless might, the giant boulders of the Alps has found a nobler use today. Seeking to build, rather than to destroy, hydroelectric engineers now scour the mountains for power sites, realizing that the enormous elevations once so fatal to soldiers may be employed through hydraulics in the service of mankind. An extreme case is that of the Lake Fully plant in the Swiss Alps which develops 12,000 horse-power from a vertical fall of 5,400 feet in one sheer drop. Thus the mountains, once regarded as waste barriers grimly separating countries, are now teeming with engineering activities. The list of such natural fortresses transformed by technology into strategic economic utilities includes—to cite only a few illustrations—the Pyrenees between France and Spain, the Alps between Switzerland, France, and Italy, the Andes between Chile and Argentina, and the Kjolen range between Norway and Sweden. Unfortunately, as a result of our war heritage, all these districts are split down their backs by frontiers, impeding the electrical interconnection of units on opposite slopes. This hindrance is greatest, of course, wherever political groups view with alarm any export of energy, as in the case of certain Norwegian patriots. It can be overcome, however, as in Switzerland, where barriers are broken down by international agreements with neighbors, authorizing the delivery of power from the inner to the outer slopes of the Alps. But until such good

[2] G. W. Botsford, *A History of the Ancient World* (1917), p. 381.

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will and practical interest are universal, mountain frontiers, rich in "white coal," will continue to present hurdles to engineers.

Where there was a deficiency of mountains, historic man often selected rivers and lakes as the next best type of boundary. These waterways had the advantage of distinctness. While easier for armies to pass over than mountains, they still remain significant barriers to military invasion. Not only do they hinder an enemy's advance in the first instance, but they interfere with the moving of war supplies after a successful crossing. Speaking of the Danube watershed, J. G. Kohl shows that various tributaries both north and south, which formed serious obstacles to the march of armies, have become lines of separation between different states. Thus, Hungary is separated from Austria by the March River; the Enns River, for a considerable period the extreme western boundary of the Magyar kingdom, still separates Upper and Lower Austria; the Inn River divides Austria from Bavaria, and farther west the Iller separates Bavaria from Württemburg.[8] Of second rank in military strategy, but of first rank in clarity, rivers and lakes are common frontiers. The list also includes the Dniester River between Russia and Rumania, the Danube between Rumania and Bulgaria, the Rhine between France and Germany, the Rio Grande between Mexico and the United States, and the Yalu between Korea and Manchuria. Among lakes may be mentioned the Great Lakes between Canada and the United States, Lake Constance between Switzerland and Germany, and Lakes Peipus and Pskov between Russia and Estonia.

As long as most rivers and lakes were used primarily for purposes of transportation and defense, little objection could be found to their serving as boundaries. In the modern age, however, technology has introduced so many complications requiring the joint action of parties on both banks for their solution that it makes the division of political entities by inland waterways a source of perplexing engineering troubles.

[8] *Encyclopedia Britannica,* article on Danube River.

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The Niagara River, between the United States and Canada, is a case in point, for the division of the enormous horse-power available at its famous Falls could only be accomplished by international agreement. A more striking illustration of water boundary problems arose in connection with Chicago's sanitary policy. Chicago dilutes its sewage with water drawn from Lake Michigan through a canal. This diversion lowered the lake some six inches, affecting in the process the water level at ports in Canada and seven American states, to the detriment of shipping. Inevitably, recourse was had to law, the case reaching the United States Supreme Court. Inland water boundaries, then, cut across technical unities at the present day.

A third type of "natural" boundary is that drawn with reference to mineral and other resources. Since the advent of modern technology, lines of this character have begun to play a dominant rôle in world affairs. A controversy in this class arose in South America during the past century. North of Chile, the Bolivian province of Antofogasta and the Peruvian province of Tarapaca followed the Pacific coast. For three hundred years, these two sections were catalogued as almost worthless desert. In the decades beginning with 1860, however, the nitrate salts lying in the desert became commercially useful, owing to advances in industrial chemistry. War followed in 1879, with the result that Chile captured by force both provinces and has continued to hold them ever since. The north boundary of Chile is essentially a nitrate boundary. The European peace settlement after the World War, though less clear-cut in its economic aims, also took careful account of natural resources. To France, for instance, was transferred the former German region of Alsace-Lorraine, with its yearly production of 20,000,000 tons of iron ore and some 200,000 tons of potash; while to Poland went the valuable coal fields of German Upper Silesia. In short, technology, by greatly magnifying the importance of certain minerals and creating a wholly new demand for others, has made natural resources one

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of the leading factors in fixing boundaries—a factor certain to grow in significance.

It might be supposed that boundaries drawn with reference to natural resources, being inherently technical, could easily satisfy the requirements of the engineer. This, nevertheless, is not necessarily the case. If a single important mineral is taken away from a highly industrialized nation, the nation may be brought face to face with ruin, so intricately interwoven are the uses of minerals. Such was the issue involved in the proposed transfer of the entire coal and iron basin of Upper Silesia from Germany to Poland after the World War. This shift was blocked, on the ground that the readjustment "would so weaken industrial Germany that she would refuse to sign the peace treaty; even if she did sign, it would be impossible for her to fulfill the reparations clauses of the treaty."[4] Even cupidity has limits.

The truth is that no boundaries can be drawn with reference to natural resources which will meet all the requirements of technology, so interwoven are its complexities and so startling are the changes in its methods. The World War settlement, for example, gave to France the valuable iron region of Lorraine, but left Germany in possession of the vital coal region of the Ruhr. Now the production of iron and steel requires two prime ingredients, iron ore and carbon in the form of coal or coke. The two materials are heated together, the carbon combining with the oxygen in the ore and escaping as a gas, leaving the iron that remains almost pure. In the case cited above, the two ingredients are separated by a national boundary, breaking the Ruhr-Lorraine iron and steel unit in twain. The frontier also cuts across a connecting railroad especially designed for the efficient loading, unloading, and hauling of ore and coal. This line was built to transport freight both ways. To the furnaces of the Ruhr it hauled iron ore, and on the return trip to Lorraine it carried coal for furnaces in the latter section. Speaking of the old Ruhr-Lorraine system,

[4] Isaiah Bowman, *The New World* (1928), p. 412.

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Isaiah Bowman states that "these two regions became united by capital combinations and formed the greatest industrial center in the world."[5] If the new Franco-German frontier hinders the flow of coal and iron, then, says Mr. Bowman, "France will be in a bad way unless her industrial leaders have worked out on their own account, with their equals in Germany, thoroughgoing reciprocal arrangements that disregard boundaries." Such arrangements must also be flexible, for radical technical changes may make obsolete in a day the best laid plans of previous generations.

Boundaries are not always created by nature and accepted by man. On the contrary, they may be drawn with reference to purely human conventions and concepts. Of this character are straight frontiers following latitude and longitude lines. That true north and south or east and west boundaries are rare is evidence that they were originally adopted only in relatively unexplored sections where alternative points of reference were still to be mapped or in stretches of land deemed of slight economic value. This peculiar origin limits their appearance primarily to North America, Australia, and Africa.

In the first-named continent, the dividing line between Alaska and Canada is the 141st meridian west of Greenwich for most of its length; that between Canada and the western states is the 49th parallel north of the equator. Many American states, such as Colorado and Utah, are marked on one or more sides by straight lines. Colorado is bounded, for example, on the south by the thirty-seventh parallel, on the north by the forty-first, on the east by the twenty-first meridian west of Washington, D.C., and on the west by the thirty-second. In Australia, the several colonies are separated almost exclusively by parallels and meridians. Even the little island of Sakhalin, lying off the coast of Asia, is divided into Japanese and Russian sections by the 50th parallel of north latitude. The civil engineer, in the rôle of surveyor, then, may set

[5] *The New World* (1928), pp. 278-279.

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the fate of peoples by observations of the sun and stars for latitude and longitude.

Although latitude and longitude lines are easy to survey, they ignore all other factors—mountains, rivers, natural resources, and the rest. Such a single-minded process inevitably brings trouble in its train. The mid-continental oil and gas field, for instance, is cut in twain by the Oklahoma-Kansas line, which follows the 37th parallel; while the Ohio-Indiana oil and gas field is almost evenly divided by the Ohio-Indiana border, which follows "a line due north from the mouth of the Miami River." What is true of oil and gas is equally true of coal, for the meridian and parallel boundaries of western Pennsylvania cut right across the Appalachian coal fields. Under our federal system, where each state has important powers over its own natural resources, this change of jurisdiction in the midst of geological districts is unfortunate. Latitude and longitude lines, by ignoring the terrain over which they pass, are very apt to be unsatisfactory to the engineer.

The human element in the fixing of boundaries appears most strongly in the principle of the self-determination of peoples. Briefly, the settlement after the World War involved the readjustment of the borders of eastern Europe in such a way as to permit the important races or racial groups to govern themselves. The names of the new nations born of the war are indicative of this movement: Czechoslovakia, the domain of the Czechs and Slovaks; Yugoslavia, the kingdom of the Serbs, Croats, and Slovenes; Poland, the land of the Poles; Estonia, the abode of the Esths; Latvia, the home of the Letts; Lithuania, named after the Lithuanians; Finland, after the Finns; and others. Bowman indicates, in map form, how closely some of the national boundaries follow the limits of settlement of the several races. Latvia and Estonia are especially striking in this connection.

However pleasing to patriots the principle of the self-determination of peoples may be, it is a false assumption that boundaries drawn with an eye solely to the national feelings

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of neighboring inhabitants are pleasing to the engineer. The Banat is a good illustration; for, although it is a single agricultural unity, it is inhabited by a diversity of peoples. An ethnic frontier was laid out after the World War, and now splits it in two. Speaking of the new condition, Bowman says: "To separate the Rumanians of the Eastern Banat from the Serbs, Magyars, and Germans, who live in the western half of the district, in a measure disorganizes the commercial life of the region. . . . It should be noted that the new north-south boundary in the Banat cuts across all the westward-flowing streams and also the railways and irrigation canals."[6] Nor is the Banat an isolated instance. The drawing of ethnic lines throughout the Balkans has disarranged whole systems of economy. "Before the World War the Danube was largely in the territory of Austria-Hungary. Shipments upon the river were affected by a single customs arrangement for the whole territory. Commerce up and down stream for a distance of 700 miles had no frontiers to cross, no delaying formalities to observe. At the present time a shipment down river over this distance must pass out of Austria into Czechoslovakia, thence successively into Hungary, Yugoslavia, and Rumania; and at each boundary there are distinct formalities, different customs rates, varying degrees of delay."[7]

Finally, there is the principle of administrative logic. In the fixation of local boundaries especially, this principle is applied to secure geographical areas that are convenient for simple governmental purposes, often as they existed long ago before the invention of the steam engine. An interesting case in point is the readjustment of the internal political lines of France, following her first Revolution. Of this reorganization, Albert Mathiez says: "The chief thing borne in mind was the condition requisite for good administration. The original idea had been to form administrative areas of such a size that all the inhabitants could reach the chief town in a single day. The desire was to bring the administration as near to the pub-

[6] *The New World* (1928), p. 370.
[7] *Ibid.*, p. 331.

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lic as possible.'"[8] Largely with reference to distance, as measured in the days of the ox-cart and stage coach, the civilized countries of the world are laid off into a bewildering number of districts, formed with respect to the "convenient" administration of police, taxes, roads, and other matters.

Though reasonably "efficient" for certain purposes, these districts are a marked hindrance to the realization of many technical designs. Few objections may be lodged against allowing a New England town to manage the "pounds" within its jurisdiction, but permitting closely settled regions to battle with fire without reference to their neighbors is quite another matter. Fires run wherever there is fuel to feed upon, regardless of precious political boundaries. If the combustible masses lie scattered among several adjoining municipalities, then the combined mass becomes a common fire hazard that should receive common engineering treatment in the matter of protection. To place one portion of the mass under lax laws and inadequate fire-fighting equipment is to endanger the remainder. If the laws were uniform in strictness and the apparatus characterized by standard efficiency, the fire problem would still not be a mere neighborhood affair. When a great fire threatens to engulf a town and local apparatus is not sufficient, engines from distant centers must be employed to save the day. Boundaries based on "administrative convenience," as conceived in handicraft days, are generally ill-adapted to the requirements of technology. Nor can we overlook the fact that the improved highway and the internal combustion engine have rendered obsolete the time-of-travel basis formerly employed in laying out such areas. Even the once simple matter of assessing property for taxing purposes has become of state-wide, and nation-wide, significance.

Summarily, the land is criss-crossed with a welter of internal political boundaries—natural, straight, racial, and "logical"—all with technical implications. The high seas present a striking contrast to this scene; for although they occupy three-fourths of the earth's surface, they are not carved into

[8] *The French Revolution* (1928), p. 88.

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bits by hundreds of internal boundaries. Quite to the contrary, the high seas form, by common consent, a single international tract. The boundary between the unitary high seas and the multi-bordered "land" is usually fixed at three miles from shore—the narrow ribbon between the coast and the high seas being called "territorial water" and placed under the control of the adjacent political entity. This boundary between "land" and sea, following the famous "three-mile limit," is of historic origin, a curious child of early technology. Bynkershoek, in his *Dominion of the Sea* (1702), indicated that if the coastal fortresses of a nation could cover part of the ocean by gunfire, they were in a position to command respect in that area. The doctrine satisfied the authorities of the day and became a maxim of international law. As the range of eighteenth-century cannon was about three miles, the ocean three miles from shore became subject to the protection and sovereignty of nations.

The three-mile limit, so evolved, remains a fundamental dogma to this day. Although the tenacity of the concept is unchanged by technical development, its validity is challenged. To begin with, the range of cannon on which the limit was initially based has grown from the paltry three miles of the eighteenth century to some seventy-five miles today. On Bynkershoek's own theory, nations can now "enforce" their authority from land fortresses over an area of adjacent waters twenty-five times as great as was possible two hundred years ago.

But more is involved than the police aspect of the three-mile limit; peace-time engineering is affected. There is, for instance, the matter of submarine cables. If a cable did not come within any territorial waters, then it would not be subject to any laws or any flag; the designer would have a free hand. However, since the cable depends for its commercial existence upon securing business ashore, it must always terminate on land at both ends. And the moment it crosses the three-mile limit, government agents on the coast prepare to apply national control to the entire line, if possible. Such cables, being

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forced to traverse the three-mile limit, cannot escape coming into conflict with the human line that severs the high seas from territorial waters.

An excellent illustration of the practical upshot of this combat between submarine cables and boundaries is afforded by the Pacific situation. In preparing the way for an American cable to the Orient at the turn of the century, plans were laid for establishing a relay station on some island intermediate between Hawaii and Guam, both of which are, of course, American. During the formulation of the cable design, the vice-president of the American concern involved wrote to the Secretary of the Navy as follows: "You may perhaps be aware that by reason of the limited distance for transmission of the electric current through a submarine cable, it was absolutely necessary in establishing the Pacific cable to locate a station either on the Marshall Islands, which belong to Germany, or on the Midway Islands, which belong to the United States. Every consideration from a cable standpoint was in favor of selecting the Marshall Islands. . . . The United States Government insisted, and, I wish to add, very properly insisted, from a governmental standpoint, that the cable must be an all-American cable, and hence that it must land on the Midway Islands."[9] Here the engineer warped his art to avoid crossing the territorial-water line of Germany in the Pacific.

Under technology, the world has reached such a state of complication that no system of boundaries, on land or sea, is uniformly satisfactory for all technical needs. Yet engineering holds the key to the modern scene and demands a reckoning. To permit a translation of progress in science and invention into practice, various remedies for the boundary problem have been formulated and put into use. To these solutions we now turn.

A ready answer to the difficulties raised by a single set of boundaries and a single engineering project is to make the former fit the special requirements. Following this tack, many

[9] Quoted in L. B. Tribolet, *The International Aspects of Electrical Communications in the Pacific Area* (1929), p. 188.

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"special districts" have been established, their names being indicative of their character. The list of types includes, among others, irrigation districts, water districts, power districts, and sanitary districts.

How a district of this variety may serve to solve a local technical problem was recently demonstrated in New Jersey. Thirty-seven municipalities lying within the watershed of the Passaic River discharged their wastes into that stream in such profusion as to produce dangerous pollution. Divided by city limits, these units were improperly seweraged. Accordingly, New Jersey surrounded the region with a special boundary line and named the resulting section the Passaic Valley Sewerage District. To govern the tract, a board of commissioners was appointed with power to design a sewer, but only at the request of the interested localities. To give force to the argument, the discharge of sewage into the Passaic River after a fixed date was forbidden. Compelled to take action, and finding the construction of independent lines impractical, the localities worked with the commission on a joint sewer.

An alternative method to the rearrangement of boundaries by the formation of engineering districts is the practical neutralization of boundaries for particular purposes through the coöperative efforts of adjacent political entities. The highest type of joint action employs nations as its components and grand areas as its field. Of just such type is the international management of radio communications. Frankly recognizing that by their very nature ordinary radio waves can respect the limits of no unit except the globe itself, nationalism has been submerged in the stream of rationality. At periodic intervals, world assemblies meet for the preparation of general treaties which become binding on all the signatories alike. At the Washington radio conference of 1927, seventy-nine independent governments were represented, and the great majority of them adhered to the finished agreement. Thus the necessity of providing modern technology with the proper boundary conditions under which to operate efficiently is steadily gaining recognition, and is forcing modifications in sover-

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eignty. This must inevitably promote a new spirit of international understanding.

Paralleling international coöperation, on a smaller scale, is the coöperation of local administrative units in levelling boundaries that interfere with engineering activities. Here is a type of political development that offers room for immense achievements in the future. Of this character, for instance, is the recent adoption of plans for the "mutual aid" of fire departments in American municipalities, without any revolutionary changes in political areas. Under such a scheme, a cooperative program is arranged in advance by "conversations" among administrative officials; if an emergency arises in one political entity, assistance is rendered by others according to a fixed schedule, and there is no need to waste time in frantic efforts to reach the proper authorities in adjoining places with the hope of securing their help before it is too late. On the contrary, all red-tape is eliminated in advance, and a sharp call brings positive and immediate response. In southern Illinois, an extensive mutual-aid fire system among some sixty-eight communities operates under the name of the Egyptian Fire Fighters Association, showing what neighborliness and administrative planning can do over a large area slashed into units by political boundaries. A second system binds together the Massachusetts cities of Chelsea, Everett, Malden, and Revere, assuring common activity on specified conditions.[10]

All this merely illustrates a highly significant trend caused by technology, which will soon force a reconsideration of traditional political geography. It may well happen that, as technology operates over ever larger areas, carrying standards and uniformity with it, we shall have to revise our whole concept of jurisdictions and local laws. For example, it would be desirable to have one law of railroads, covering operating conditions, taxation, rates, and services, uniform throughout the country, sweeping away all local interventions devised by local authorities, and thus wiping out jurisdictional units so

[10] H. S. Walker, "Fire Department Mutual Aid," *The American City* (March, 1931), pp. 91-101.

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far as this branch of transportation is concerned. Such a revolution would certainly contribute to the efficient carriage of goods. Equally startling suggestions arise in connection with other branches of technology and serve as warning notices that a new human purpose—the efficient production and transportation of goods according to the requirements of engineering rationality—is at work in the world, running counter to and altering the old purposes of defense, nationalism, and administrative convenience. Lawyers, political scientists, and statesmen will have to reckon with it; and boundaries, districts, and inter-unit relations will have to be reconsidered in the light of its insistent demands.[11]

[11] For illuminating comments on political geography as a political science field, see the note on that subject by Harold H. Sprout in this *Review*, May, 1931, pp. 439-442.

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THE DOCTRINE OF THE SOVEREIGNTY OF THE CONSTITUTION

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The contemporary criticism in England of the traditional theory of the state can conveniently be traced to the famous introduction of Maitland to the fragment of Gierke.[1] It is significant to note that Maitland's analysis followed by one year the classic restatement of the orthodox view by Bosanquet, thus perhaps offering another illustration of the common observation that when a doctrine has received its fullest elaboration, its decline has already set in.[2] During the first twelve or fifteen years of the present century, this criticism became an important undercurrent of political thought, as shown by the emergence of Distributivism and Guild Socialism, the passing of the zenith of the conventional Fabianism with the publication in 1909 of the Minority Report on the Poor Law, and the publication of Figgis's *Churches in the Modern State* in 1913.[3] This later view was as yet, however, only an undercurrent; for the main stream of thought as indicated by L. T. Hobhouse in his *Liberalism* (1911) did not show any effects of the new leaven. Only during the next decade, say between the publication of Russell's *Principles of Social Reconstruction* (1916) and Professor H. J. Laski's *Grammar of*

[1] No attempt will be made here to give a bibliography of the development of political ideas in England during the present century. Unless otherwise stated, the books mentioned refer to the first editions as published in London. This paper deals exclusively with English political thought. Further, with one exception, no effort will be made to show the relation of certain political ideas to recent legislation or party policy. An effective treatment of this relation would require a paper much longer than the present one. To Professor F. W. Coker, the present writer is indebted for a number of valuable suggestions.

[2] Bosanquet's *The Philosophical Theory of the State* was published in 1899.

[3] Some understanding of the recent drift in contemporary political ideas in England may be obtained by comparing L. T. Hobhouse's *Liberalism* (1911) with his *Elements of Social Justice* (1922), and the *Fabian Essays in Socialism* (1889) with Sidney and Beatrice Webb's *A Constitution for the Socialist Commonwealth of Great Britain* (1920). See also the introduction by Sidney Webb (now Lord Passfield) to the 1920 edition of the *Fabian Essays.*

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Politics (1925), did the novel movement become the main current. Viewed in wider perspective, Russell, Hobhouse, the Webbs, Tawney, Cole, Laski, and Hobson offer variations on the same theme. The completeness and comprehensiveness of Professor Laski's *Grammar of Politics* make it especially significant. The book is, in fact, a summary of the development of English thought since 1900.

In the past five years, there has been no new departure in English political thought. The books published may indicate strategic withdrawal. Thus Bernard Shaw, in his *An Intelligent Woman's Guide to Socialism and Capitalism* (1928), restates substantially the Fabianism of a generation ago. Cole, in his *The Next Ten Years in British Social and Economic Policy* (1929), discards guild socialism. Mr. Hobson, in his most comprehensive statement as presented in his *Economics and Ethics; A Study in Social Values* (1929), shows an attempt at fortifying places already captured rather than making new conquests.[4] Professor Laski, too, in his *The Dangers of Obedience, and Other Essays* (1930) and *Liberty in the Modern State* (1930), has amplified with new illustrations the basic ideas given in his earlier and more comprehensive volume; but the ideas themselves remain unmodified. These signs apparently suggest that the high-water mark of the movement has already passed.

It must not, however, be understood that the new dispensation has evoked universal allegiance in England. Its influence has been intensive, but, as to be expected, not complete. The old view never lacked disciples and defenders. A notable illustration of this is Professor MacDougall's *The Group Mind*, published during the zenith of the new movement in 1920. This puts forward, disregarding technical differences, the thesis of Bosanquet. More important for our present purpose is the aim of the Master of Balliol, A. D. Lindsay, to present a reconstructed theory of sovereignty which is intended to meet

[4] In Cole's book, see especially Chaps. VII, VIII, and XV. Hobson's book is published by D. C. Heath and Co., Boston and New York.

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heterodox criticism.[5] This proposal is significant and merits analysis. But before we begin our survey of Lindsay's doctrine it is well to discuss first T. H. Green's theory of sovereignty, both because Lindsay's doctrine is related to that of Green and also because the inclusion of Green's view will complete for our review the important theories of sovereignty promulgated in England during the past century.

To Austin, says Green, the state is a bracket enclosing sovereign and subjects.[6] Sovereignty is the unlimited force exercised by determinate persons to will acts of universal reference. To Rousseau, on the other hand, sovereignty is the exercise of the general will, that is, the will of the individuals when directed to the common good. Neither view is, to Green, adequate. The Austinian doctrine is incorrect because it regards sovereignty as the creature of the subjective will of determinate persons. On the other hand, Rousseau's theory is fallacious because it divorces sovereignty both from the determinate will of specific persons and from power to enforce obedience. Each view, therefore, when taken alone, is not acceptable.

Green's own view is a synthesis of those of Austin and Rousseau. To Green, the conception of sovereignty implies the power on the part of determinate persons to declare and enforce law, and hence to maintain a system of rights. However, in the fully developed states such a power is not an arbi-

[5] Lindsay's theory is substantially given in *Sovereignty* (Proceedings of the Aristotelian Society, New Series, Vol. XXIV, 1924, pp. 235-254) and (with H. J. Laski) *Symposium: Bosanquet's Theory of the General Will* (Aristotelian Society, Supplementary Volume VIII, 1928, pp. 31-62). Also of interest in this connection are his "The State in Recent Political Theory (*Political Quarterly*, No. 1, February, 1914, pp. 128-145); "The State and Society" (in *The International Crisis: The Theory of the State*, pp. 92-109, Oxford University Press, 1916); *Karl Marx's Capital* (Oxford University Press, 1925); *The State, The Church, and the Community* (Present Day Papers, No. 11, issued by Copec Committee, 1927); *General Will and Common Mind* (a lecture, 1928); and *The Essentials of Democracy* (University of Pennsylvania Press, 1929).

[6] The substance of Green's theory of sovereignty is set forth in his *Lectures on the Principles of Political Obligation*, pp. 93-105.

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trary whim, and the coërcive function itself is normally merely a remote contingency. Here the sovereign authority receives obedience only because it expresses the expectations and usages of men. We may define "that impalpable congeries of the hopes and fears of a people, bound together by common interest and sympathy,"[7] as the general will; and as such it prescribes the principles of obligation and the terms of authority. In fine, the legal order exists within the ambit of the social tradition.[8] Green's doctrine certainly raises some interesting issues. Here, however, we are concerned with the bare statement itself, and not with its possible complications.

While Green offers a synthesis of the doctrines of Austin and Rousseau, Lindsay's doctrine of the Sovereignty of the Constitution is for the most part a synthesis of Austin and Bosanquet. As we would expect, the conclusions of Green and Lindsay are related. Just as in the case of Green, we can best understand Lindsay's own theory if we state first his interpretation of the preceding writers on the problem. His own view, like that of Green, is in fact interwoven with a subtle survey of other writers. Austin, he states, approaches a theory of sovereignty by way of a theory of law. Law, to Austin, is the command of the sovereign. The basis of sovereignty rests, not on a quasi-legal explanation of contract, but merely on the fact of obedience. Whatever may be the explanation of obedience, sovereignty rests on the mere fact that some per-

[7] *Principles of Political Obligation,* p. 98.

[8] "Thus when it has been ascertained in regard to any people that there is some determinate person or persons to whom, in the last resort, they pay habitual obedience, we may call this person or persons sovereign if we please, but we must not ascribe to him or them the real power which governs the actions and forbearances of the people, even those actions or forbearances (only a very small part) which are prescribed by the sovereign. This power is a much more complex and less determinate, or less easily determinable, thing; but a sense of possessing common interests, a desire for common objects on the part of the people, is always the condition of its existence. Let this sense or desire—which may properly be called general will—cease to operate, or let it come into general conflict with the sovereign commands, and the habitual obedience will cease also." *Principles of Political Obligation,* pp. 96-97.

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sons receive the habitual obedience of other persons.[9] Law, however, is not only a command, but, to Austin, a command emanating from determinate persons. The giver of commands must be a definitely recognizable person or body of persons. Austin's theory of sovereignty involves, therefore, first, the notion that the source of sovereignty rests on the fact of obedience, and, second, an insistence that the wielder of sovereignty should be a definite person or body of persons.

Such a doctrine, Lindsay holds, was true of the absolutist states of the seventeenth and eighteenth centuries. The basic fact of these states was that the people obeyed the command of a determinate authority, the absolute monarch. The monarch then incarnated in his own person the source of authority and the source of determinateness. A combination of these two factors in the same authority is not true any more. As soon as the wielder of authority is more than one person, the important fact is not that commands are obeyed, for some commands are not obeyed. Only those commands are obeyed that are issued according to rule. In modern states, Austin's explanation that the source of authority is derived from the fact of obedience to command is not true. Obedience to law is given now, not because commands have been issued, but because commands have been issued in accordance with certain principles. When commands are issued contrary to these principles, they are not regarded as commands. To Lindsay, however, Austin's conception that law must be issued by a determinate person or body of persons is still valid. Whatever may be the explanation of the ultimate source of the authority of law, if the person or persons from whom laws issue is indeterminate, there will be disputes in regard to the particular

[9] It should be noted that there is some difference in the interpretation of Austin as given by Green and by Lindsay. For our present purpose, such difference is not of great significance. See, however, Green's view in his *Principles of Political Obligation*, pp. 95-96, and Lindsay's view in *Proceedings of the Aristotelian Society*, New Series, Vol. XXIV, p. 238. It should also be noted that we are not here immediately concerned whether the interpretations of Green and Lindsay of the writers they analyze is in all particulars correct.

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application of the law. In order to avoid anarchy, it is necessary to have a determinate declarer of what the law is, even if the declarer of law is only the instrument of an authority not its own. Without it, positive law is inconceivable. Lindsay thus rejects Austin's conception that the source of the authority of the sovereign rests on the fact of obedience, but retains his emphasis on the need for an ascertainable expounder of law.

Again, according to Lindsay, Bosanquet, following the suggestion of Rousseau, regards sovereignty as the exercise of the general will. The general will is the expression of the entire complex of institutions that reflects the associated activity of men. This entire network of relations constituting the community Bosanquet identifies with the state. To Bosanquet, this elaborate system of interrelations which he designates as the state is an harmonious whole. It is self-governed. It operates automatically. It is self-contained and internally determined. The business of government is to accept it and let it alone. A large degree of interference would check the freedom of its spontaneity. The task of legislation is merely to remove the impediments which check its spontaneous movement. Its function is to hinder hindrances.

To Lindsay, Bosanquet's theory tells what law should be, but it does not indicate how we can tell when a law is a law and when not. It stresses the vast hinterland of law; it calls attention to the fact that acts of government should consider the total situation. Law, to be valid, must express the complete life of man. Political machinery should regard the innumerable relations of man. Bosanquet thus emphasizes a normative standard. He aims at explaining what is the nature of the source of authority of law. As a complete theory of sovereignty, however, it is inadequate, for it does not tell how we can recognize a law when given. It stresses influence, not government. In order that we may be able to know law, there must be a determinate declarer of law. There must be a prescribed expounder of law. To Lindsay, an adequate theory of sovereignty must include both aspects. It must analyze the nature

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of the ultimate source of the authority of law, and must provide for an ascertainable announcer of the definite provisions of law.

It is now apparent that Lindsay's doctrine of the sovereignty of the constitution combines those aspects of the theories of Austin and Bosanquet which he regards as valid. From Austin it takes the conception of the need of a determinate declarer of positive law, and from Bosanquet the emphasis on the total situation which alone gives positive law its moral force. Again, it discards the Austinian view that the source of the ultimate authority of law lies in the fact of obedience to the commands of the sovereign; and to Bosanquet's conception of the moral source of the authority of law, it adds the Austinian view that law, to be recognized as such, must have an ascertainable declarer. What Austin calls "positive morality," and what Rousseau, Green, and Bosanquet call the "general will," Lindsay names the "law of the constitution." "It is surely obvious," he states, "that the main fact about all modern constitutional government is not that the bulk of society obey certain persons, but that they accept a certain constitution and that they obey the commands of the government, i.e., of certain determinate persons, because they have got into authority through the working of the constitution and in so far as their commands are within the limits of the constitution. This is equally true of a country like our own, where the constitution is largely unwritten as it is of the United States."[10] To Lindsay, in the modern state, too, some persons command and other persons obey, but obedience is due to the fact that commands are issued in accordance with the rules prescribed in the constitution. Obedience now is not obedience to those who issue commands, but to the ultimate source of authority which grants the power to issue commands. The constitution provides for certain rules derived from the total situation, and determinate persons declare and apply these rules.

To Lindsay, the justification for the maintenance of the

[10] *Proceedings of the Aristotelian Society*, New Series, Vol. XXIV, p. 243.

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sovereignty of the constitution is based on the necessity of maintaining throughout the state a common rule which includes the provision that disputes should be settled only in a certain defined way. The possession by the government of force to give effect to the mandates of the constitution implies the paramountcy of the political relationship. Its priority to, and preëminence over, other forms of relationship are thus not left to a chance decision on the merits of each particular dispute. "The state's monopoly of force," Lindsay argues, "is the expression of the sense of its citizens that the purposes it represents are so important and paramount that they will have some guarantee beforehand that they will be safeguarded. They are not to be left to men's appreciation of their superior importance from time to time. But the greatest and most decisive of these common interests is just the principle of a legal and constitutional settlement of differences which may arise within the community."[11] Force, however, is not the essence of the state; the state can exercise force only because the citizens are ready to defend with force the maintenance of allegiance to a common constitution. In fine, Lindsay's doctrine is that in modern constitutional states sovereignty rests with the constitution, which provides certain rules governing political behavior, and that certain persons forming the government have the power to declare and enforce law because such powers are exercised within the categories prescribed by the constitution.[12]

Lindsay's doctrine of the sovereignty of the constitution, as analyzed above, is indeed arresting. It is preferable to the theories of Austin, Green, and Bosanquet. Austin's theory was based on the Benthamite conception of the autonomous nature of personality. Hence the state, to Austin, was merely

[11] *Proceedings of the Aristotelian Society,* New Series, Vol. XXIV, p. 248. See also *The Essentials of Democracy,* pp. 60-67, on the problem involved.

[12] The present schematic survey of Lindsay's doctrine may perhaps show it in an unduly simplified light. It is, however, believed that it is no more simplified than any abridgment necessitates. Again, the sharpness of outline may be offset by a gain in clarity. See, however, his two contributions published by the Aristotelian Society, referred to above, where the substance of his theory is given.

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a contrivance enclosing governors and governed. Law was the command of certain autonomous individuals over other autonomous individuals. To an age that asserts that personality develops through social relations, such a view, except from the narrowest legalistic angle, is thoroughly unacceptable. Green's theory of sovereignty is a protest against the Benthamite conception. His statement that certain persons command because they express the general will is an affirmation that the political relationship is not alien to personality. The state as the maintainer of a system of rights fulfills an essential need of personality. Green, however, was unconscious of the complex character of relations that create personality, and hence of the complex background of law. Bosanquet's theory not only failed to provide, as Lindsay points out, for a determinate declarer of law, but it also involves the annihilation of personality; for he, like Rousseau, identifies sovereignty with the infallible expression of the permanent interest of personality as opposed to ephemeral caprice. Lindsay's view that sovereignty rests with the constitution, which provides for a common standard, and that certain determinate individuals declare the law in accordance with the rules of the constitution, suggests that the political relationship, because of greater comprehensiveness, is entitled to primacy. The needs of personality, he implies, demand priority of allegiance to the most extensive common bond. His statement of sovereignty avoids the defects of his predecessors and offers a satisfactory explanation.

However, valid as Lindsay's statement of the concept of sovereignty is, it cannot be considered, as he intends it to be,[13] a reply to contemporary critics. Present-day writers in England do not offer any opposition to the need of recognizing a common bond, with certain individuals authorized to declare law and enforce it throughout the state. Contemporary critics of the traditional theory do not advocate anarchy, in

[13] See *Proceedings of the Aristotelian Society*, New Series, Vol. XXIV, pp. 235-236 and 245 ff. Among English critics of sovereignty, Lindsay mentions specifically Figgis, Laski, and Cole.

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the sense of the absence of an agreed declarer of law. Whatever may have been the implications of certain isolated statements of certain individual writers in the early stages of the movement, no such criticism of the movement as a whole, or of the more developed doctrines of the outstanding writers of the new dispensation, is justified now. The books of Russell, the Webbs, Hobhouse, Cole, Laski, Tawney, and Hobson are entirely devoted to the promulgation, in varied degree of completeness, of certain principles, and to the elaboration of the institutional structure authorized to give effect to these principles. As the term is used by Lindsay, these books elucidate different proposals for the constitution of a reconstructed state.

It should also be noted that, contrary to the implication of Lindsay, the granting by the present writers of the right on the part of individuals to dissent from and oppose the declared will of the state is far from unconditional. When we consider the various writings of any one writer, or of all of them, as a whole, and not merely particular writings of any single writer, which may have been written with an obviously polemical intention, we find that active hostility to the state is conceded only on exceptional occasions; even then, the individual is exhorted to consider the possible dangerous consequences of his action, and to take the responsibility, both morally and physically, for them. The writers also hope that when their proposals, as analyzed below, are adopted, occasions for serious dissent will shrink to a vanishing point. Therefore, Lindsay's doctrine of the sovereignty of the constitution does not suggest the least challenge to the drift which, as noted before, has developed during the present century. To the extent to which he has thus far developed it, his view is a parallel statement, and parallel statements, like parallel lines, never meet.[14]

[14] "I should like, if I may, to state my own way of rejecting this approach [Bosanquet's] to the analysis of the problem. I do not deny that the state is the great coördinating organ of society. I do not either deny that some such coördinating organ there must be, if anarchy is not to reign. There are conflicting purposes in society: the burglar and the policeman, the Roman Catholic and the secularist,

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The reason why Lindsay regards his doctrine as a counter-proposal to the views of some writers is that he confines his attention solely to the purely critical and negative aspects of these writers. Our brief survey of the constructive ideas of the present-day movement—a movement in the sense of common tendencies observable in the suggestions of a number of writers—will show, it is hoped, that Lindsay's procedure misconceives its real significance. Contemporary writers regard a state based upon centralization, economic inequality, and international irresponsibility as hostile to freedom. Their task is therefore devoted to a search for freedom, and freedom is interpreted to mean unhampered opportunity on the part of all men to develop their personality to the greatest extent. Since the personality of the individual cannot be separated into disparate compartments, they argue that freedom, to be substantial, must exist in all forms of relationship. The means by which they propose to attain freedom for the vast masses is by an approach to equality in the possession of all forms of power, whether of office or of property. Their goal is freedom; and their means, a dispersion of power. Their varied suggestions aim at translating this ideal of freedom through equality into the concrete. In effect, too, their proposals amplify some of the vague hints given by Lindsay himself.[15] It is with this ideal in mind that we can recognize some coherent unity behind the varied suggestions of diverse writers.

With Lindsay, our writers now agree that the state organized on the basis of inhabitancy, representing the interest of men as citizens, is the most effective instrument of coördinating the diverse interests of society; but, unlike Lindsay, they show concretely how to make the state a more suitable medium

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Sir Alfred Mond and Mr. Cook. For the purpose of social peace, the terms of the life these opposites must live have to be laid down. All of this, I take it, is common ground between idealism and its critics. But, at this point, the paths seem to me to diverge radically.'' H. J. Laski, in *Aristotelian Society,* Supplementary Vol. VIII, 1928, p. 48.

[15] See, for example, *Aristotelian Society,* Supplementary Vol. VIII, pp. 43-44, and *The Essentials of Democracy,* pp. 68-82.

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of coördination.[16] They thus suggest that in order that the decisions of the government should adequately reflect the complete social environment, functional relations should be linked directly with the structure of government. Only then will the acts of the government represent all available experience, and only then will its authority be woven in the texture of the multiplicity of relations. Yet, authority, no matter how reached, if centralized, is dangerous to freedom. Hence it is suggested to reserve as great as possible an area of self-government to functional and territorial units. Such centers of self-government are valuable, not only because they form sources of resistance to centralized authority, but also because they make freedom more attainable by reserving power to those who are keenly interested in the consequence of its exercise. Therefore, the present-day anomalies of local government should be removed, and its structure should be made more appropriate for vastly expanding powers. Again, since the state touches the lives of its citizens in numerous spheres, it should be held liable for the acts of its agents in the same way as a private citizen. This implies the end of the legal irresponsibility of the state. The purpose of contemporary writers is to suffuse the whole political relationship with the spirit of consent.

In the realm of industry—the present situation of which

[16] The following books may give an understanding of the movement in its developed form: Bertrand Russell, *The Principles of Social Reconstruction* (1916); S. and B. Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (1920); G. D. H. Cole, *Social Theory* (2nd ed., 1921), and *The Next Ten Years in British Social and Economic Policy* (1929); R. H. Tawney, *The Acquisitive Society* (1921); L. T. Hobhouse, *The Elements of Social Justice* (1922); H. J. Laski, *The Grammar of Politics* (1925). As already stated, Lindsay refers specifically only to Figgis, Cole, and Laski; but a reading of the above books will show, it is believed, that the views of these three are generally shared in varied extent by other writers. The emphasis on the movement here placed necessarily involves omission from the analysis of some striking suggestions offered by certain individual writers. This, however, is offset by the aim which the present method has of giving some unity and coherence to the constructive aspects of the entire contemporary development. It should be added also that, as already mentioned, Cole has now discarded his view of organizing the coördinating authority mainly on a functional basis (see *The Next Ten Years*, etc., Chap. VII). The suggestion of linking functional activities with the government is, however, generally advocated.

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Lindsay himself recognizes as ominous[17]—contemporary writers apply the same ideal of freedom through equality. Here it is advocated to link the entire industrial system with the structure of government. Industry as a whole will then be directed to serve immediately the interests of consumers and producers, will be subjected to an adequate standard of technical efficiency, and will be exposed to pitiless publicity. This public control, which may extend to the whole range of industrial activity, may involve little, if any, direct public ownership and operation, and is, of course, compatible with an endless variety of forms of public control. When found necessary, industries and services that are especially vital to the community may be transferred gradually, with compensation to owners, from private hands to direct public ownership and operation. Each industry so transferred will then be responsible to Parliament for its general policy. Its form of administration, however, will be adjusted to the particular nature of the industry; its administration will be decentralized, with all interests concerned, including those of the workers, participating in its government, and will be exposed to a standard of efficiency imposed by an independent authority. It is expected that economic activity will not be characterized by an imposed uniformity, but will be rich in manifold diversity. It is further advocated that throughout the whole society should be enforced a minimum standard of education, income, housing facilities, working conditions, including participation of the workers in the government of all industries, both private and public, and also security against illness, old age, and unemployment. Violations of this standard will be severely punished, for it will be regarded as a degradation of personality. As society approaches a greater degree of economic equality, the present consumers' coöperative movement will expand its activities, and the trade unions, freed from their present concentration on defense against the owners of property, and other occupational organizations will play an integral part in

[17] See his *General Will and Common Mind*, p. 27, and *The Essentials of Democracy*, pp. 80-81.

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the government of industry. While inequalities exist, the curtailment of the right to inheritance and taxation, graduated both as to the amount possessed and as to source whence the income is derived, is expected to redress the balance.[18] These proposals, it is thought, will permit the full development of the ordinary man to a far greater extent than is possible at present.

Freedom, however, is incomplete unless the numerous relations that transcend state lines, to which the contemporary movement has drawn emphatic attention, also find expression in organization based upon consent of those involved. Contemporary writers, therefore, stress the need for the substitution of authority based upon the precarious foundation of competing nationalism by an international authority based upon the participation of all in the formation of common decisions. A league of states with powers more extensive than the existing organization is suggested as necessary. Just as within the state functional relations should be coördinated with the political relations, so in the activities that transcend state lines functional international organization should be joined to the international organization composed of the representatives of the governments of states. Again, just as within the state functional organization should be given a considerable area of self-government, so functional international organizations should be empowered to formulate regulations governing their own activities. Contemporary writers visual-

[18] "The industrial organization which we are thus led to contemplate is one in which unearned wealth would accrue to the community; the universal and elementary conditions of private work and remuneration would be laid down by law, and would be adjusted in detail, developed, expanded, and improved as the conditions of each trade allow by Trade Boards; while industrial management would be in the hands of joint boards of consumers and producers, the municipality, coöperative associations, or private enterprise according to the nature of the industry, and the relative efficiency for varying purposes of which various forms of organization prove themselves capable. These are questions of the means wherein we are to be guided by experience of results, not questions of the ends by reference to which we judge the results themselves." L. T. Hobhouse, *The Elements of Social Justice*, p. 184.

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ize the gradual emergence of a loose world federalism, with a division between powers which properly belong to the state and powers which just as properly belong to an international authority—such powers as, for example, to enforce disarmament, to prevent war, to protect minorities, to secure free commercial intercourse, to impose standards of public health and of labor conditions, to protect native races, and to settle disputes in regard to frontiers. Thus, by deconcentration of all forms of power, irrespective of its nature or extent, it is expected that the ordinary man will be able to achieve freedom.

We may now be ready for a summary and conclusion. An attempt has been made to show that Lindsay's doctrine, as developed thus far, is not in a form comparable with the views of the writers we have surveyed. He has offered only a doctrine of sovereignty, while they have given a full theory of the state. He has tried to present what Austin presented in his *Province of Jurisprudence Determined,* and not what T. H. Green, L. T. Hobhouse, G. D. H. Cole, and H. J. Laski have achieved in their respective contributions. In relation to their views, all that we can say about his doctrine is that he has given a doctrine of sovereignty which is not contradictory to their theories of the state, and that, like their theories, it offers an attempt at reconstruction following recent criticism. In order that his view may be placed on the same basis with those of the writers named, he will have to expand his doctrine of sovereignty into a theory of the state. It will be necessary for him to elucidate the presuppositions which, to him, condition the exercise of sovereignty. It will be essential for him to give a body to his skeleton. Then, after he has expanded his survey, it may either be an alternative proposal, or, in harmony with the vague suggestions to which we have already referred, it may be in general outlines related to the views of the other writers. Whatever form it may take, it will be on a plane from which similarities and contrasts can be deduced. Now, little of that can be done. Then, too, he may give a solution to some of the problems which a bare state-

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ment of sovereignty necessarily leaves unexplored.[19] At present, his doctrine of sovereignty can no more be compared with the proposals of the other writers than a preliminary scaffolding can be compared with a completed building.

Any significance, therefore, which Lindsay's doctrine possesses cannot rest on the fact that it is a reply or a challenge to the views of others. Its value is grounded on a more secure basis. Lindsay's theory is not a counter-proposal, but a positive contribution. He offers an independent principle. He has restated the doctrine of sovereignty in an ingenious manner, and in a form which is sufficiently broad and comprehensive to serve as a foundation both for writers of diverse inclinations and for varied types of political organization. By offering a satisfactory exposition, he has freed writers on politics from concentrating their attention on the formal concept of sovereignty, thus enabling them to analyze more concrete problems. Contemporary critics challenged the doctrine of sovereignty as developed by Austin and Bosanquet, and then proposed, as we have seen, a positive theory of the state. They did not elaborate explicitly a distinct and separate theory of sovereignty. Lindsay has achieved this. He offers a foundation on which to construct a complete edifice. He makes it possible to move the plane of discussion of politics from the center to the periphery.

[19] For some of these questions directed to Lindsay, see the conclusion of Professor Laski's discussion in the *Symposium: Bosanquet's Theory of the General Will*, referred to above, and also his article on "Law and the State," *Economica*, November, 1929.

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THE JAPANESE PRIVY COUNCIL[1]

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For more than a decade, the Privy Council has been the subject of political controversy in Japan. Today, a group of liberals look upon the Council as an obstruction to the progressive development of parliamentary government and urge its reform, if not abolition. Under these circumstances, there is a tendency to subject the Council to considerable scrutiny from a utilitarian viewpoint. What is its purpose? Does it adequately fulfill this purpose, or does it obstruct the present trend of representative government in Japan? What reforms in its structure and functions are to be recommended? The answers to these questions are suggested largely by the varying liberal or conservative views of the various critics.

An evaluation of the achievements of an organ of government such as the Privy Council may be guided by several standards of value. One standard aims to measure the success of the institution in achieving the purpose of the statesmen who were the architects of its being. Another attempts to measure the success of the institution in promoting what is generally accepted at the present time by intelligent persons as good government. Measured by the first of these standards, the Privy Council would probably disappoint the author of the constitution, or at least disappoint his expectations as expressed in the almost naïve language of the celebrated *Commentaries on the Constitution* wherein the Council was designed "to serve as the highest body of the emperor's constitutional advisers," and was "to be impartial, with no leanings to this or that party, and to solve all difficult problems."[2] Moreover, the Council was to remain strictly advisory, and

[1] The concluding instalment of this article will appear in the November number.

All translations of Japanese sources were made by Dr. Sterling Tatsuji Takeuchi. The writer also acknowledges a debt to him for much information and many suggestions on this subject.

[2] *Commentaries on the Constitution of the Empire of Japan, by Count Hirobumi Ito, translated by Miyoji Ito* (Tokyo, 1889), pp. 98-99.

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was not to be an organ of supervision over the ministry, as witness the prohibition in the ordinance of 1888 declaring that "it shall not interfere with the executive." It would be unnecessarily cruel in this place to point out the long list of difficult problems which the Council failed to solve, even during the life of Prince Ito. The Council still remains as the highest constitutional consultant of the emperor; but it has lost its claim to impartiality, and is now playing an active rôle in politics. At the same time, the Council has abandoned its advisory character for one of supervision, and consequently has found itself increasingly in conflict with the ministry. In this capacity as a check upon the cabinet, which has come more and more under the influence of the representative branch of government, the Privy Council is compelled to occupy a position in which it appears not only as a drag on parliamentary progress but also as a possible impediment to political efficiency.

I. PLACE IN THE CONSTITUTIONAL SYSTEM

It is not difficult to speak of Japanese political institutions from the functional attitude, for the constitution of 1889 was a deliberate attempt to set up a new form of government carefully devised after a study of modern constitutions throughout the world and adjusted to meet Japanese conditions. Forty years ago, the Privy Council—like the cabinet, the House of Representatives, and the House of Peers—was a new institution, and, like these other components of government, had its place in Prince Ito's political scheme. The throne, of course, stood apart from these institutions. It existed before the constitution; it was the source of the constitution; and it was to remain the indispensable element in the revision of the constitution.

The Privy Council—unlike the Imperial Diet—was established previous to the adoption of the constitution. But its origin precedes the constitution by scarcely a year.[3] It was created in 1888 for the original purpose of deliberating under

[3] The cabinet system had been established at even an earlier date, namely, in 1885.

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the presidency of Prince Ito on the draft of the constitution; for it would have been contrary to the principle of an emperor-granted constitution to convoke a popular assembly to discuss the draft of the fundamental law.[4] The framers of the constitution intended to include a privy council among the organs of the new government, and thus provided for the continuation of the existing council under the constitution. Curiously enough, the constitution mentions the Privy Council in only one place, namely, in Article LVI, which reads: "The privy councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of state, when they have been consulted by the emperor."[5] Here the constitution clearly refers to the imperial ordinance of April 28, 1888 (commonly cited as the *Sumitsuin Kansei*) creating the Privy Council; and this ordinance with its amendments, although not a part of the constitution, is to be considered as one of the constitutional documents of Japan.[6]

It is not to be implied that this origin gives the Privy Council a privileged position in the constitutional system of Japan. Quite on the contrary, in the treatises of the jurists the Council is considered as one of the organs of government on a parity with the legislature, the cabinet, and the courts.[7] Fur-

[4] Compare Minobe-Tatsukichi, *Kempo Seigi,* or "Commentaries on the Constitution," (Tokyo, 1928), p. 554.

[5] The official English translation of the constitution is found in Prince Ito's *Commentaries.* The official Japanese text is in *Genko Horei Shuran,* or "Compilation of Laws and Ordinances in Force," (Tokyo, 1927), Vol. I, bk. i, pp. 1-14.

[6] This ordinance, cited as Imperial Ordinance No. 22 of 1888, in its amended form, is found in *Genko Horei Shuran,* or "Compilation of Laws and Ordinances in Force," (Tokyo, 1927), Vol. I, bk. iii, p. 5. An English translation of the ordinance was published in the *Japan Weekly Mail,* May 12, 1888, pp. 444-445, and is reprinted in W. W. McLaren, *Japanese Government Documents* (Transactions of the Asiatic Society of Japan, Tokyo, 1914), Vol. XLII, pt. i, pp. 127-132.

[7] Compare Hozumi-Yatsuka, *Kempo Teiyo,* or "Principles of the Constitution," (Tokyo, 1910), Vol. II, p. 567; Ichimura-Kokei, *Teikoku Kempo Ron,* or "Commentaries on the Imperial Constitution," (Tokyo, 1926), pp. 656-661; Minobe-Tatsukichi, *Kempo Seigi,* or "Commentaries on the Constitution," (Tokyo, 1928), p. 552; Shimizu-Cho, *Kempo Hen,* or "Principles of Constitutional Law," (Tokyo, 1923), p. 1099; Uyesugi-Shinkichi, *Kempo Jutsugi,* or "Commentaries on the Constitution," (Tokyo, 1924), p. 701.

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thermore, its existence is technically less secure than that of the other components of government. The constitutional organization and powers of the legislature, for instance, may be modified only by an amendment to the constitution, which requires, under Article LXXIII, a proposal by the emperor and a two-thirds vote of both houses of the Diet. The Council could not be abolished except by an amendment to the constitution; for, in Article LVI, its existence is recognized. But its organization and powers can be modified by an imperial ordinance issued on the authority of the emperor.[8] It is true that, by virtue of the *Sumitsuin Kansei,* "measures relating to the amendment of the organization of the Privy Council and to the rules for the conduct of its business" must be submitted to the deliberation of the Council. But, technically, this does not mean that the emperor must be bound by the advice of the Council. Nevertheless, to abolish or modify the organization or powers of the Privy Council without its consent would be, at the present time, inconsistent with constitutional usage.

In the nicely adjusted system of Prince Ito, there was small room for democracy. The government was built around the emperor; for the political psychology of the Japanese people, their deep-rooted respect or reverence for the throne, was fully recognized. The descendant of a "line of emperors unbroken for ages eternal" combined in himself the sovereignty of the state and the government of the country and his subjects. Supreme control of administration was in the hands of the emperor; but, unlike some European monarchs, he was never to act in matters of state save through a minister of state. Through the cabinet, imperial commands were to be conveyed and administrative affairs executed. Since the emperor was so intimately a part of the governmental scheme, a special group of advisers was necessary. Hence the Privy

[8] "Inasmuch as the Privy Council is a constitutional organ, it cannot be abolished without constitutional amendment. But since its organization is determined by imperial ordinance, this may be amended freely by the emperor. However, such amendment of the organization of the Council and the rules for the conduct of its business cannot be made without having been submitted to the Council for advice thereon." Ichimura, *Teikoku Kempo Ron* (1926), p. 657.

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Council had the duty to give opinions on important matters of state in response to the emperor's call. To its deliberation should be submitted measures proposed by the cabinet, including drafts of law supplementary to the constitution, certain imperial ordinances, and treaties. In the words of Prince Ito, the Council was to serve as "the highest body of the emperor's constitutional advisers." Finally, in response to modern demands, legislative powers were granted to an Imperial Diet including an elected House of Representatives, with a limited electorate, and a House of Peers.

Here was the frame-work of a parliament, but without the parliamentary spirit. There was no rule of ministerial responsibility. In the Imperial Rescript of 1893 it was made clear that "the appointment or removal of ministers of state is absolutely the prerogative of the sovereign, and no interference whatever is allowed in this matter."[9]

In drafting the constitution, Prince Ito and his collaborators drew heavily upon the German models. The prerogatives of the emperor and the structure and powers of the cabinet and of the legislature show the German influence. The Privy Council, however, has almost no counterpart in contemporary Europe. It belongs to the England of the Stuarts or the France of Louis XIV, and certainly not to Japan of the Tokugawa shogunate.

Like the fathers of the American republic, Prince Ito had an abhorence of political parties and built the constitution with the intent of discouraging their existence. In less than a decade, he wisely changed his mind; and fortunately his constitution was sufficiently elastic to permit of the rise and progress of parties as well as of the parliamentary system. In his well-known *Commentaries,* Prince Ito speaks on this subject in no uncertain terms.[10] The Privy Council was to remain above all parties and factions, giving its counsel without political prejudice of any kind. As expressed by the con-

[9] Compare Kudo-Takeshige, *Teikoku Gikaishi,* or "Parliamentary History of Japan," (Tokyo, 1901), Vol. I, p. 278.

[10] P. 99.

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servative jurist, Dr. Hozumi, the Council "stands outside of political controversies, impartial, the protector of the constitution, curbing the arrogance of the Diet, and controlling the autocracy of the ministers of state."[11]

II. NATURE AND FUNCTIONS OF THE PRIVY COUNCIL

According to Article LVI of the constitution, the Privy Council is to serve as an advisory body for the emperor in regard to affairs of state. The Imperial Ordinance of 1888 and the Imperial House Law of 1889 also provide for the reference of various questions regarding the imperial family. Thus the Privy Council has two functions—one constitutional, and the other dynastic. In other words, it is an organ of the state and an organ of the imperial house.

As an organ of the imperial house, the Privy Council has certain important duties regarding succession and regency. Under Article IX of the Imperial House Law, if the imperial heir is suffering from an incurable disease of mind or body, or when any other weighty cause exists, the order of succession may be changed with the advice of the Imperial Family Council and the Privy Council.[12] Likewise, under Article XIX, a regency may be instituted upon the advice of the two councils.

As an organ of state, the Council performs its duties only upon the consultation of the emperor. Herein lies the primary distinction between the Privy Council and the cabinet. The

[11] *Kempo Teiyo* (1910), Vol. II, 570. Dr. Hozumi-Yatsuka was professor of constitutional law from 1891 to 1912 and dean of the law faculty of the Imperial University of Tokyo from 1898 to 1912. He is not to be confused with Baron Hozumi-Nobushige, the well-known authority on family law and a contemporary member of the same law faculty, who served as president of the Privy Council from 1924 to his death in 1926.

[12] *Genko Horei Shuran* (1927), Vol. I, bk. i, pp. 15-29. An official English translation of the *Koshitsu Tempan,* or Imperial House Law, can be found in Ito, *Commentaries* (1889), 156-167. The Imperial Family Council, as provided in Article LV, consists of the male members of the imperial family who have reached their majority; while the Lord Keeper of the Privy Seal, the President of the Privy Council, the Minister of the Imperial Household, the Minister of State for Justice, and the President of the Court of Cassation take part in the deliberations.

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ministers of state take the initiative and voluntarily present their views to the emperor (save in the matters that must first be laid before the Council), whereas the privy councillors can give advice only when consulted by the emperor. Indeed, the prestige of the Council depends entirely upon the emperor, upon the will of the emperor to consult the Council regarding all important affairs of state, and even to follow the advice of the Council when in conflict with the advice of the cabinet. There is nothing in the constitution asserting the superiority of the Council's advice; but the spirit of the constitution, as interpreted by Prince Ito's *Commentaries* (which refers to the Council as "the highest body of the emperor's constitutional advisers,") clearly implies such precedence. On the other hand, there are no constitutional prohibitions upon the emperor; and a progressive emperor, breaking with the past, might, without violating the letter of the constitution, consistently ignore the advice of the Privy Council, whether or not in conflict with that of the cabinet.[13]

Such procedure would be in line with the development of parliamentary government in Japan. For the Privy Council has no responsibility to the Diet. In the constitutional system envisaged by Prince Ito, even the cabinet was independent of the Diet.[14] But the necessities of budgetary legislation and the growth of the democratic spirit during the past forty years have compelled an increasing ministerial responsibility, until at the present time the cabinet is intimately responsible to the two houses, even in such matters as foreign policy. The growth of the parliamentary principle in Japan has made conspicuous the isolation of the Privy Council. It is an absolutely irresponsible body. Even in the case of decisions of the Council con-

[13] In the words of the *Commentaries* (p. 99): "The Privy Council is to hold deliberations only when its opinion has been asked for by the emperor; and it is entirely for him to accept or reject any opinion given."

[14] The *Commentaries* (p. 93) read: "Who then is it, except the sovereign, that can appoint, dismiss, and punish a minister of state? The appointment and dismissal of them having been included by the constitution in the sovereign power of the emperor, it is only a legitimate consequence that the power of deciding as to the responsibility of ministers is withheld from the Diet."

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trary to the proposal of the cabinet and accepted by the emperor, a minister of state must shoulder the political responsibility. No responsibility attaches to either the emperor or the Privy Council. At the same time, the Privy Council has no authority to receive petitions from the people or to question officials, and it possesses no power to issue commands binding the subjects.[15] The privy councillor thus lacks the dual capacity of the minister of state, who on the one hand advises the emperor, and on the other hand administers the affairs of state. The cabinet officer not only participates in a deliberative body, but also has personal charge of the administration of a department of government; the privy councillor has no other function than to debate in an irresponsible consultative body.

III. COMPETENCE OF THE PRIVY COUNCIL

As already indicated, the competence of the Privy Council falls under two heads, the first as an organ of the imperial household, the second as an organ of state. It should be noted, however, that the functions of the Council as an organ of the imperial household are vitally concerned with what under nearly all other modern monarchical constitutions is considered as an affair of state, namely, succession to the throne and the regency. Here the Imperial Family Council and the Privy Council act in a matter of supreme importance to the people as well as to the dynasty.

The competence of the Privy Council in the ordinary affairs of state is defined in the *Sumitsuin Kansei* as follows: "(1) Drafts of law and doubtful points relating to the provisions of the constitution and laws and ordinances supplementary thereto. (2) Proclamation of martial law under Article XIV, and the imperial ordinances issued under authority of Articles

[15] The rules of procedure laid down in the *Sumitsuin Kansei* contain the following: "II. The Privy Council cannot receive petitions, representations, or other communications from the Imperial Diet, from either house of the same, from any governmental office, or from any of His Majesty's private subjects whatever. III. The Privy Council shall have official connection with the cabinet and with the ministers of state only, and officially shall not communicate or have any connection whatever with any of His Majesty's private subjects." *Genko Horei Shuran* (1927), Vol. I, bk. iii, p. 5.

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VIII and LXX of the constitution, as well as all other imperial ordinances having penal provisions. (3) International treaties and agreements. (4) Matters relating to the amendment of the organization of the Privy Council, and to the rules for the conduct of its business. (5) Matters specially submitted to its deliberation for advice, in addition to those above mentioned."[16]

In the writings of the jurists, this competence is usually classified in three divisions.[17] The first pertains to the interpretation and amendment of the constitution, and includes the authority to advise upon: (1) drafts of amendments to the constitution, (2) drafts of laws and ordinances supplementary to the constitution, and (3) questions referred to the Council regarding the interpretation of the constitution. The second category concerns the competence of the Privy Council in lieu of the Imperial Diet. Under the constitution, certain powers are exercised ordinarily by the Diet, but in case of inability to convoke the Diet, the Privy Council may act. This quasi-legislative competence is comprehended under two heads, namely: (1) concerning those powers to be exercised only when the Diet is not in session, including the approval of emergency imperial ordinances as provided under Articles VIII and LXX of the constitution, and (2) concerning those powers to be exercised irrespective of the sitting of the Diet, such as approval of imperial ordinances declaring a state of siege (martial law), ordinances carrying a penalty, and treaties and international agreements.[18] The third category in-

[16] Imperial Ordinance No. 216 of 1890, issued on October 8, 1890, amending the ordinance of April 28, 1888. *Genko Horei Shuran* (1927), Vol. I, bk. iii, p. 5. For an English translation, see *Japan Weekly Mail,* Oct. 25, 1890, p. 411.

[17] Compare Minobe, *Kempo Seigi* (1928), pp. 561-562; *Gendai Kensei Hyoron,* or "Commentaries on Contemporary Government," (Tokyo, 1930), pp. 72-107; Ichimura, *Teikoku Kempo Ron* (1926), pp. 657-658; Shimizu-Cho, *Kempo Hen* (1923), p. 1001; and his article on "The Privy Council" in *Kokka Gakkai Zasshi,* or "Journal of Political Science," (March, 1909), Vol. XXIII, no. 3, pp. 335-346.

[18] The constitution provides: "Article VIII. The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, imperial ordinances in the place of law. Such imperial ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said ordinances, the Government shall declare them to be invalid for the future. Article LXX. When the Im-

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cludes the self-governing competence of the Council, namely, approval of ordinances governing the organization and powers of the Council, and rules for its conduct of business.

All measures come before the Privy Council by means of a message from the emperor; the cabinet does not directly lay its proposals before the Council, although unofficially and informally ministers and councillors make suggestions to each other. There are two forms for the submission of these measures to the Council's consultation. One is that of a draft drawn up by the cabinet. All proposed laws, ordinances, and treaties submitted for ratification take this form. The other form consists merely of a request for the opinion of the Council on a question. It is by this method that queries of interpretation of the constitution and the laws come before the Council.

While the language of Article LVI of the constitution vaguely indicates that the privy councillors shall "deliberate upon important matters of state when they shall have been consulted by the emperor," the text of the *Sumitsuin Kansei* implies that the emperor will submit every measure embraced under the categories therein mentioned to the consultation of the Council.[19] At least, such is the interpretation placed upon the constitutional arrangement by the Council itself and followed by the cabinet in practice.[20] Exceptions are few, the

perial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the Government may take all necessary financial measures, by means of an imperial ordinance. In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto."

[19] Article VI of the *Sumitsuin Kansei* reads: "Upon His Majesty's submission for advice, the Privy Council shall hold deliberations and report its opinions upon the following matters." Then follow the six enumerated matters of state.

[20] Dr. Uyesugi held to the contrary. "As to the matters over which the Privy Council has competence, the constitution merely refers to important matters of state. Although the *Sumitsuin Kansei* enumerates six items, enumeration does not mean that the competence is confined to these matters, nor does it mean that the emperor must consult the Privy Council in these matters, except in case that the order of succession to the crown is contemplated." *Kempo Jutsugi* (1927), p. 702.

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most conspicuous being the emergency imperial ordinances issued in September, 1923, following the great earthquake, which are considered as valid even though not submitted at the time to the Council.

A difficult problem as to the jurisdiction of the Council is raised by the question as to whether this body may amend the draft of an ordinance or law or an act of the Diet submitted to its consideration. Professor Minobe argues, and apparently with logic on his side, to the effect that, inasmuch as a treaty or an act of the Diet has definitely determined content, it admits of no alteration by the Council, which is compelled to approve or reject it as a whole.[21] As to a draft of an imperial ordinance or draft of a bill before introduction in the Diet—although they may appear to admit of amendment by the Council, nevertheless such procedure is unwarranted, as it permits irresponsible officers to draft governmental measures. Professor Hozumi heads the group of jurists who hold that the Privy Council is well within its powers when compelling the cabinet to re-draft projects of ordinances and laws in conformity with its dictates.[22] Practice, it should be added, is on the side of Hozumi.

The function of the Privy Council as guardian and interpreter of the constitution merits special attention. Under the *Sumitsuin Kansei,* this duty is included in three categories, namely: (1) deliberation on draft amendments to the constitution, (2) deliberation on projects of law and ordinances supplementary to the constitution, and (3) interpretation of the constitution, laws, and ordinances supplementary to the constitution.[23]

Now the amendment of the Japanese constitution is a question that intimately touches the sovereignty of the emperor.

[21] *Kempo Seigi* (1928), p. 562. Dr. Minobe-Tatsukichi has served since 1903 as professor of administrative law and constitutional law on the faculty of the Imperial University of Tokyo, and as dean of this faculty from 1925 to 1927. He is the founder of the new school of Japanese jurisprudence.

[22] *Kempo Teiyo* (1910), Vol. II, p. 580.

[23] Compare Minobe, *Gendai Kensei Hyoron* (1930), pp. 81-82; Ichimura, *Teikoku Kempo Ron* (1926), pp. 659-660.

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According to the preamble and Article LXXIII of the constitution, amendment can be undertaken only on the initiative of the throne.[24] This does not mean that the cabinet may not undertake the drafting of amendments. Indeed, the ministers of state are responsible to the emperor for preserving the constitution by proper amendments whenever the necessity arises. But drafts of amendments must be submitted to the Council before being presented to the emperor. If approved by the Council, they will be offered to the emperor with the advice that by imperial order they be submitted to the Diet. Thus the Council constitutes one of the four deliberative bodies which must pass upon a proposed amendment before adoption.

In many countries with written constitutions, the governmental system is frequently modified by laws and ordinances supplementary to the constitution without having to labor with formal amendments. This is true of Japan. The Law of the Houses, the Electoral Law of the House of Representatives, and the Law Concerning Organization of the Courts, together with the Imperial Ordinance Concerning the Organization of the Privy Council, the Imperial Ordinance Concerning the House of Peers, the Imperial Ordinance Concerning the Organization of the Cabinet, and the Imperial Ordinance Concerning Forms of Public Documents, are examples of supplementary constitutional law. Drafts of amendments to any of these ordinances must be submitted by the cabinet to the Council, and this body has not proved to be backward in criticizing and proposing changes in the projects. Likewise, the cabinet

[24] The preamble of the constitution provides: "When in the future it may become necessary to amend any of the provisions of the present constitution, we or our successors shall assume the initiative right, and submit a project for the same to the Imperial Diet. The Imperial Diet shall pass its vote upon it, according to the conditions imposed by the present constitution, and in no otherwise shall our descendants or our subjects be permitted to attempt any alteration thereof." Article LXXIII provides: "When it has become necessary in future to amend the provisions of the present constitution, a project to that effect shall be submitted to the Imperial Diet by imperial order. In the above case, neither house can open the debate, unless not less than two-thirds of the whole number of members are present, and no amendment can be passed unless a majority of not less than two-thirds of the members present is obtained."

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must submit to the Council drafts of proposed laws supplementary to the constitution before they are introduced in the Diet. Inasmuch as the House of Representatives and the House of Peers may amend these bills or introduce substitute bills, the cabinet finds itself doubly scrutinized in this field of legislation.

In still one other manner the Privy Council seems to have authority as a "palladium of the constitution." It has been customary for jurists to refer somewhat mysteriously to the Council's power to end constitutional controversies through its interpretation of the constitution.[25] They have in mind the authorization of the Council to report upon the "doubtful points relating to the provisions of the constitution and laws and ordinances supplementary thereto." As Professor Minobe has prudently indicated, this provision is not to be interpreted as a grant of power vesting the Council with the authority of a court of constitutional controversies like the American judiciary.[26] Such authority may be conferred only by virtue of a provision in the constitution, and not by an imperial ordinance. Moreover, the Council does not have a monopoly upon the right to interpret the constitution and laws and ordinances. Every day, the cabinet, both houses of the Diet, the Board of Audit, to say nothing of the Administrative Court and courts of law, interpret the constitution and laws and ordinances, all of them acting independently of each other and in their respective jurisdictions.

The right to address the throne is highly prized in Japan; the provision of Article XLIX of the constitution providing that "both houses of the Imperial Diet may respectively present addresses to the emperor" has been warmly cherished by both liberals and conservatives from the beginning of the constitutional monarchy. Thus it was not unexpected that, during conflicts between the House of Representatives and the Peers, or with the cabinet, appeals should be made to the emperor for an interpretation of the constitution. Such an occa-

[25] Compare Hozumi-Yatsuka, *Kempo Teiyo* (1910), Vol. II, p. 569.
[26] *Gendai Kensei Hyoron* (1930), pp. 88-89.

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sion arose in the third Diet, when the House of Representatives and the Peers collided over the competence of the Peers to amend an amendment of the Representatives to the budget. To end the deadlock, the Peers presented an address to the throne praying for an interpretation of their constitutional powers.[27] The address was referred by the emperor to the Council for advice, and the Council's reply to the effect that the Peers had authority to re-insert items stricken out of the budget by the lower house was incorporated in the imperial edict which the emperor sent to the Peers.[28]

Despite this precedent, it has not become common practice to address the throne for interpretations of the constitution. The pronouncements of the Council, therefore, are thus limited chiefly to the projects and questions submitted by the cabinet. The ministers voluntarily may refer questions of constitutional doubt.[29] At the same time, it is mandatory to submit all laws and ordinances supplementary to the constitution, as well as emergency ordinances, many of which involve constitutional questions.

The Privy Council acts, not only as the emperor's supreme interpreter of the constitution, but also as his adviser on the ratification of international treaties. In most parliamentary governments, the legislature plays an important rôle in treaty-making, either by its support of the ministry or by votes of

[27] *Dai Nippon Teikoku Gikaishi*, or "Parliamentary Records of the Imperial Japanese Diet," (Tokyo, 1926), Vol. I, p. 1743. During the debate in the House of Peers over the address, no reference was made to the Privy Council. The emperor was assumed to be the interpreter of the constitution.

[28] *Dai Nippon Teikoku Gikaishi* (1926), Vol. I, p. 1750. The address was voted on June 11, 1892. The imperial edict was dated June 13. Regarding this controversy, compare Kudo, *Teikoku Gikaishi* (1901), Vol. I, pp. 152-158.

[29] Compare Minobe, *Gendai Kensai Hyoron* (1930), pp. 89-92. On paper, the Council possesses a judicial function. According to Article XLV of the Law Concerning Administrative Litigation, it is provided that until the establishment of a court of jurisdictional litigation, the Privy Council is to decide controversies concerning conflict of jurisdictions. Thus far, no legislation providing for procedure in the submission of cases has been passed; hence there is no provision for instituting suits. Cf. Minobe, *Kempo Seigi* (1928), p. 563; *Gendai Kensai Hyoron* (1930), p. 107.

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ratification. Under the Japanese constitution, the Diet has no share in the negotiation and ratification of treaties, which according to Article XIII belong to the prerogative of the emperor.[30] In practice, the ministry negotiates treaties, while, by virtue of the *Sumitsuin Kansei,* the Privy Council advises the emperor as to ratification.

Finally, reference should be made to a consultative faculty of the Privy Council which has never fully blossomed. There have been numerous occasions when councillors were consulted in regard to the selection of a premier. Evidently Prince Ito, among others, believed that the custom should be permanently established. At any rate, in a memorandum prepared about the time of the first Saionji ministry (1905-08), he made note of the fact that the Genro was reduced to four Elder Statesmen and suggested that after their death it would be well to transfer the consultation on cabinet changes to the Council.[31] About the same time, we are told, Baron Sakatani proposed to Premier Saionji that after the death of Yamagata, Ito, and Matsukata, the Genro be discontinued and that advice as to the selection of premiers be left to the president of the House of Peers, the president of the Privy Council, and the Lord Keeper of the Privy Seal.[32] One by one, the Genro have passed away without successors taking their places, until now only Prince Saionji, born in 1839, remains.[33] He is still consulted in the selection of new ministries. But no formal steps have been taken to transfer the Genro's unique function to the Privy Council after his demise.

Formerly it was not unusual for the president of the Council to be asked by the emperor to fill the post of premier dur-

[30] Compare article by the writer on "The Treaty-Making Power in Japan" in *American Journal of International Law,* Vol. XXV, pp. 270-297 (April, 1931).

[31] Hiratusuka-Atsushi (ed.), *Ito Hirobumi Hiroku,* or "Secret Memoirs of Prince Ito," (Tokyo, 1929), p. 61. In the same memorandum, Prince Ito suggested an amendment to the *Sumitsuin Kansei* increasing the membership of the Council to fifty.

[32] *Ito Hirobumi Hiroku,* p. 62.

[33] Marquis Okuma and Prince Yamagata died in 1922, and Prince Matsukata in 1924.

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ing the interim between the resignation of one ministry and the appointment of the succeeding one. On three occasions, Prince Saionji as president of the Council served in this capacity. In recent years, however, the emperor instructs the outgoing premier to hold office until his successor is appointed —a practice more comportable with parliamentary government.

IV. ORGANIZATION AND PROCEDURE OF THE PRIVY COUNCIL

The organization of the Privy Council is comparatively simple. According to Article II of the original *Sumitsuin Kansei,* the Council is composed of a president, vice-president, and twelve or more councillors, appointed by the emperor, together with a secretary-general and a secretariat. Under the amendment to the *Sumitsuin Kansei* of 1930, the number of councillors was increased to twenty-five. By virtue of their office, the ministers of state are entitled to sit in the Council as councillors and vote as well as debate. Ministers may also be represented by deputies with the right to speak but not to participate in the decisions. Debates are decided by a majority vote of the members present.

It was the intention of the framers of the constitution that the ministers of state should always be in a minority in the Council. In 1889, when the cabinet numbered ten, the Council was composed of fourteen; today, when the cabinet has increased to thirteen, the Council, with twenty-four members, shows an even greater preponderance of privy councillors. While the quorum for a plenary session of the Council is only ten, the fact that councillors are paid handsome salaries makes them assiduous in rendering service to the state and causes the meetings to be well attended, thus obliterating any expectation of the cabinet's outvoting the councillors. The Council has frequently pressed for increase of membership. A strong cabinet turns a deaf ear to such demands, while a weak cabinet is tempted to buy some immediate concession by acquiescence.[34]

[34] It appears that in the last months of the tottering Tanaka ministry some sort of promise was made by the premier for an increase of two seats. When the Hama-

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When the Hamaguchi ministry in 1929 refused to accede to the demand of the Council for an increase of two seats, the councillors in turn brought forward a proposal to amend their regulations so as to deprive the ministers of their votes.[35]

According to the *Sumitsuin Kansei,* the appointment of the councillors is made by the emperor. This provision, however, has no unusual significance, for the emperor personally appoints every officer of *Shinnin* rank. As in all matters of state the emperor acts only upon advice, so in the matter of appointing the councillors the emperor consults and follows the recommendation of his advisers. His chief counsellors in this matter appear to be, in the first place, the premier and the ministers of state, second, the Genro and Imperial Household Minister, and third, the councillors. In practice, when there is a vacancy the cabinet takes the initiative, consults the Genro, and informally presents a candidate. Conversations are then opened with the president and other councillors, and when agreement is reached, the premier makes a formal recommendation of the nominee to the emperor. In practice, no nomination is made to the emperor without the approval of the president of the Council.

In recent years, the Government has not acted as promptly in filling vacancies as privy councillors have desired, and it is not unknown for the president to call upon the premier and urge more haste.[36] As in the matter of increasing the membership of the Council, so also in regard to appointments, a weak cabinet will permit a considerable amount of dictation

guchi ministry took office in July, 1929, the councillors attempted to compel redemption of the alleged promise. The cabinet decided that inasmuch as the new ministry had not been informed of the alleged promise by the outgoing cabinet, it was not bound to consider the question. *Tokyo Asahi Shimbun,* Sept. 4, 1929, p. 3; *Jiji Shimpo,* Sept. 5, 1929, p. 6; *Japan Weekly Chronicle* (Kobe), Sept. 12 and Oct. 10, 1929, pp. 291, 398.

[35] *Tokyo Asahi Shimbun,* Sept. 24, 1929, p. 1; *Japan Weekly Chronicle* (Kobe), Sept. 26, 1929, p. 349.

[36] For instance, in 1929, when the death of Marquis Inoue increased the vacant seats to four, Baron Kuratomi called upon Premier Hamaguchi at his official residence requesting more expedition. *Tokyo Asahi Shimbun,* Nov. 5, 1929, p. 6; *Japan Weekly Chronicle* (Kobe), Nov. 14, 1929, p. 526.

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from councillors, while a strong cabinet will keep the nomination in its own hands. Some ministers of state have recently declared that the cabinet should abandon the practice of consulting the councillors before making nominations to the throne.[37]

The volume of business passed by the Council is considerable. Projects of laws and ordinances, and treaties and other questions submitted from time to time, keep the councillors in Tokyo the greater part of the year. Ordinary sessions and committee meetings are held in the office of the Council in Marunouchi; the plenary sessions, in which decisions are rendered in the presence of the emperor, are held in a hall of the imperial palace.

The assignment of matters for consultation is by means of imperial message, accompanied by appropriate documents prepared by the cabinet. On the theory that the time of aged councillors can be conserved by energetic juniors, the president, vice-president, and secretariat make a preliminary investigation of each subject and decide whether the appointment of a special committee of inquiry is required. Most important subjects, like the ratification of treaties, are referred to a committee of nine or ten members. Here the actual work of the Council is performed. The cabinet officers are called before the special committees to explain the project of the Government, and are often submitted to gruelling examination. Finally, the report of the special committee is made to the Council in plenary session in the presence of the emperor; and, although a debate thereon may ensue, invariably the Council adopts the recommendation of the committee. Since councillors who are not members of the special committee are by usage excluded from the sessions of the committee, the majority of councillors are not familiar with the committee's report before it is rendered in plenary session. The fact that the recommendation of the committee never fails of adoption is perhaps some evidence of the agility of the group of veterans who lead the Council.

[37] *Tokyo Asahi Shimbun*, Sept. 4, 1929, p. 3.

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The president of the Privy Council is an outstanding official.[38] In the words of the *Sumitsuin Kansei,* "the president shall have the supreme control of all the business of the Privy Council." He presides over the deliberations, directs the secretary-general and participates in the debates, and in case of a tie vote, has the deciding voice.[39] But, most important of all, the preliminary investigation of subjects referred to the Council is in his hands; he appoints the special committees to investigate the measures submitted by the Government; and he determines the time of meeting and order of business when the Council meets. The power wielded by the president in regard to ordering the business of the Privy Council is illustrated by the delay of Baron Kuratomi to appoint a special committee to consider the ratification of the London Naval Treaty in 1930.[40] By the selection of the special committee, the president can exercise a considerable degree of control over the report of this committee—an important consideration, since as already indicated, the Council invariably adopts the report of the committee. It is not unusual for the president to appoint himself chairman of the special committee, as did Prince Yamagata in 1905 when the Portsmouth Treaty came up for ratification.

Finally, the Privy Council renders its decisions collectively to the emperor, not individually. Most Japanese jurists are agreed that, inasmuch as the Council is a deliberative organ, no privy councillor has the right to express his own opinion to the emperor.[41]

[38] The presidents of the Council have been: Prince Ito, 1889-90; Count Oki, 1890-92; Prince Ito, 1892; Prince Yamagata, 1893-95; Count Kuroda, 1895-99; Prince Saionji, 1899-1904; Prince Ito, 1904-05; Prince Yamagata, 1905-22; Viscount Kiyoura, 1922-24; Viscount Hamao, 1924; Baron Hozumi, 1924-26; Baron Kuratomi, 1926 to date.

[39] Objections are sometimes expressed in the liberal press as to the influence exerted, not only by the president and vice-president, but also by the secretary-general. Regarding the activity of the present incumbent, Futakami-Hyoji, see the *Nichi Nichi Shimbun* (Tokyo), Oct. 1, 1930, p. 7.

[40] For this delay, the president was mildly rebuked by another councillor, Viscount Ishii. *Tokyo Asahi Shimbun,* Aug. 8, 1930, p. 1; Oct. 2, p. 1. Compare *Japan Weekly Chronicle* (Kobe), Aug. 14 and Oct. 9, 1930, pp. 198-200, 422-423.

[41] Compare Ichimura, *Teikoku Kempo Ron* (1926), p. 657. Professor Hozumi may be cited as among the few jurists who hold to the contrary, on the ground

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As provided in the regulations of the *Sumitsuin Kansei,* the secretariat keeps a stenographic record of the proceedings of the Council. An injunction of secrecy is placed on the debates and votes. For many years, this rule was scrupulously observed. But following the advent of the Council into politics, the debates and votes have become almost public property. Despite the oft-repeated warnings of the president that members must not divulge the proceedings, in some occult way the newspapers are able to publish, not only full accounts of the speeches, but also a record of the votes cast. A general similarity of information throughout the press seems to indicate common sources of communication; and the accuracy of these press reports is generally assumed, even in references to the Council from the rostrum of the House of Representatives.[42]

V. THE CABINET AND THE PRIVY COUNCIL

In the view of the framers of the constitution, there was no relationship of opposition between the Privy Council and the cabinet. In theory, harmony was accentuated by the fact that the ministers of state are by virtue of their office members of the Privy Council, and, accordingly, the decisions of the Council are acts in which the ministers have participated. In practice, during at least the first decade under the constitution, and perhaps longer, harmony was promoted by the fact that the Council and the cabinet represented very largely the same controlling forces in Japanese politics. The Choshu clan did not dominate one organ, and the Satsuma clan the other, or militarists as opposed to civilians. The personnel of the two bodies was homogeneous. How this situation became altered will be discussed elsewhere. What should be examined here is

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that the constitution does not deny this privilege to the councillors. *Kempo Teiyo* (1910), Vol. II, p. 567.

[42] Compare the interpellation of Saito-Takao on March 2, 1929, *Kwampo gogai,* March 3, 1929, p. 536. Baba-Tsunego states that the leak in the news of the debates in the Council is on the side of the privy councillors rather than the ministers. Cf. "Elder Statesmen and the Privy Council," in *Taiyo* (Nov., 1927), Vol. XXXIII, no. 13, p. 96. Ministers, however, have been known to tell tales.

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the functional relationship between the two organs tending to promote coöperation or subserviency on the part of either one.

The Council has frequently been called "a third house."[48] In some respects, the sobriquet is not unfitting. For the Council has opportunity to play a rôle, not only in legislation, but also in the supervision of the executive. The Council has an extensive amending power. As to treaties and bills that have passed the Diet, the Council cannot recommend amendment, for the reason that the text is already determined. It can only advise approval or rejection *in toto*. There is one exception. The Council can and has, on occasion, like the American Senate, recommended ratification of treaties with a qualifying declaration or reservation. As to projects of law submitted to the Council before introduction in the Diet, the Council has opportunity for securing amendments. This also applies to drafts of ordinances submitted for approval. The Council does not hesitate to propose modifications to the Government—proposals that have considerable weight in view of the Council's power to recommend rejection in case the drafts are not amended. Demands for amendment are usually made in the special committees of inquiry appointed to consider the measure. Here also are made the informal suggestions to the Government to withdraw measures upon which the committee expects to make unfavorable reports in plenary session. Such suggestions are more often followed than declined.

In this manner the Privy Council exerts considerable influence on legislation, an example being the amendments which the Privy Council has compelled the Government to accept in nearly every electoral bill down to the present time. At the same time, the Council exercises a large degree of supervision over the administration. An instance of such superintendence occurred at the time of the approval of the emergency imperial ordinance for a revision of the Peace Preservation Law submitted by the Tanaka ministry in 1928 during the Communist scare. On this occasion, after warning the Government

[48] Compare Baba-Tsunego, "Elder Statesmen and the Privy Council," *Taiyo* (Nov., 1927), Vol. XXXIII, no. 13, p. 88.

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that it must discontinue attempts to amend the statute-book so shortly after adjournment of the Diet by means of emergency imperial ordinances, the Privy Council laid down a program for dealing with the control of "dangerous thoughts," including educational reform, development of a social policy, and perfection of the police system—a program which the Government was compelled to accept.[44] Again in 1925, when the Council approved the manhood suffrage bill of the Kato ministry, this approval had joined to it three recommendations as to administrative policies which should accompany the extension of the suffrage, namely, (1) measures to combat the spread of radical ideas, (2) promotion of education, and (3) strict supervision of elections.[45]

These attempts at supervision extend not only over domestic policy, but also over foreign policy, as witness the recent attempt of Count Ito-Miyoji and a group of councillors to compel the Government to carry out the so-called "positive policy" in China. There is evidence that the refusal of the Council in 1927 to approve the emergency imperial ordinance of the Wakatsuki ministry for the relief of the Bank of Formosa was partly due to the intention of these councillors to force upon the Government a more drastic Chinese program.[46] The episode led to the fall of the Wakatsuki cabinet and the advent of the more militaristic ministry of General Tanaka.

It is difficult to determine the border-line of the Council's supervisory authority. The *Sumitsuin Kansei* (Article VIII) plainly states that "though the Privy Council is the emperor's highest resort of counsel, it shall not interfere with the executive." Viewed strictly, this provision would preclude any decision of the Council that thwarts a ministerial policy. Minobe and most of the jurists, however, interpret the provision as not denying the Council any interference with gov-

[44] *Tokyo Asahi Shimbun*, June 23, 28, 29, and 30, 1928, p. 3; *Japan Weekly Chronicle* (Kobe), July 5, 1928, pp. 24-25, 29.

[45] *Jiji Shimpo*, Feb. 20, 1925, p. 1; *Tokyo Asahi Shimbun*, Feb. 20, 1925, p. 3; *Japan Weekly Chronicle* (Kobe), Feb. 19 and 26, 1925, pp. 242, 271.

[46] *Tokyo Asahi Shimbun*, April 18, 1927, p. 1; April 19, p. 3; *Jiji Shimpo*, April 19, 1927, p. 1.

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ernment, but rather a prohibition upon direct execution of administrative powers. Particularly is this the case in regard to the Council's function as interpreter of the constitution. In the words of this distinguished authority: "Since it is the most important duty of the Privy Council to protect the constitution, if it believes a proposed emergency imperial ordinance to be contrary to the fundamental law, the Council does not transcend its competence by reporting the unconstitutionality of the measure to the emperor, even if such report may lead to a change in cabinet. So far as the Privy Council is concerned, the safeguarding of the constitution is more important than the preservation of a ministry."[47]

Another far-reaching constitutional question is raised by the impact of the Council against the cabinet. In case the ministers are outvoted by the councillors, may the cabinet advise the emperor to disregard the Council's recommendation? Among jurists and statesmen, there are two opposing views. One is that, while theoretically the cabinet has the power to advise the emperor to reject a decision of the Privy Council and adopt the Government's opinion, politically the cabinet should not advise the emperor to do so.[48] The following reasons are advanced. First, such procedure would be illogical, inasmuch as the ministers of state participate in the deliberations of the Privy Council. Second, the preamble of the *Sumitsuin Kansei* refers to the Council as the "supreme counsel" of the emperor, and thus no other advice should be permitted to transcend that of the Council.[49] Third, if the cabinet should advise the throne contrary to the recommendation of the

[47] Minobe, *Gendai Kensei Hyoron* (1930), p. 120; *Kokka Gakkai Zasshi,* Vol. XLI, no. 9, p. 1383. Compare his *Kempo Seigi* (1927), p. 556.

[48] Minobe, *Kempo Seigi* (1928), 558; and his *Gendai Kensei Hyoron* (1930), pp. 114-118.

[49] The preamble of the *Sumitsuin Kansei* reads: "Whereas we deem it expedient to consult personages who have rendered signal services to the state, and to avail ourselves of their valuable advice on matters of state, we hereby establish our Privy Council, which shall henceforth be an institution of our supreme counsel; and we hereby also give our sanction to the present ordinance relating to the organization of the said Privy Council and to the regulation of the business thereof, and order it to be promulgated."

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Council, the emperor will be placed in the awkward position of having to choose between two conflicting counsels, and such procedure would be incompatible with the Japanese principle of the non-responsibility of the emperor. Thus, even if a minister of state is convinced that the decision of the Council is not sound, he should conform to it and assume responsibility therefor as long as he remains in office. If a minister proposes not to assume responsibility for any decision of the Council, even for those taken against the cabinet's advice, there is no recourse except resignation from office. In practice, the cabinet should seek to reach a compromise with the Council, redrafting the questionable projects or withdrawing them; and if compromise fails, the only step is that of resignation.

In opposition, other jurists have held that the cabinet may recommend to the throne that the Council's decision be disregarded. Dr. Oda-Man, for instance, admits that it is contrary to the spirit of the Japanese constitution to place any responsibility upon the emperor.[50] Nevertheless, the imperial sanction is merely a form; it is given upon the advice and assistance of organs of the executive. The ministers of state have the duty to assist the emperor, and in case their advice meets the opposition of the Council, the cabinet may petition the emperor to adopt their views rather than the Council's. In any event, responsibility for a decision taken in the matter, even if the emperor chooses between alternatives, must be borne by the ministers. Much the same view is expressed by Ichimura, Sasaki, and other jurists.[51] A considerable number of

[50] Article on "Functional Aspect of the Privy Council," in *Taiyo*, Vol. XIX, no. 11 (Aug., 1913), pp. 109-113. Dr. Oda is professor of administrative law in the Imperial University of Kyoto. In 1921, he was elected a member of the Permanent Court of International Justice at The Hague.

[51] Ichimura-Kokei, *Teikoku Kempo Ron* (1926), p. 658. Ichimura discusses the complicated question raised by the fact that the *Koshikirei*, or Ordinance Concerning the Form of Public Documents (1907), requires a statement in the preamble of imperial edicts promulgating emergency imperial ordinances and certain other ordinances, as well as treaties, to the effect that these measures have received the advice of the Privy Council. *Genko Horei Shuran* (1927), Vol. I, bk. i, p. 45. Does "advice" in this case mean consent? Ichimura answers in the negative.

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jurists also hold that the premier may recommend the dismissal of any councillor who consistently opposes the Government.[52] This view has been urged in the House of Representatives by the veteran Ozaki-Yukio.[53]

It is not to be assumed that the Council and the cabinet are in continual conflict. If so, government would come to a standstill. Ordinarily, if differences of opinion develop, the premier hastens to the official residence of the president, or *vice versa*, to preserve the mysterious "understanding" between the cabinet and the Council that is often referred to in the press. It has been estimated that without an "understanding" with the Privy Council more than half the business of the cabinet could not be conducted.[54] Clashes have greatly increased in recent years, but even today the two branches of government frequently work hand in glove, and it is not unusual for the cabinet to use the Council as a convenient means for suppressing measures that it does not desire to introduce in the Diet, or to approve legislation in the form of emergency imperial ordinances which would have small chance of enactment in the Diet under the watchful eyes of an alert opposition in the House of Representatives. It did not break the heart of the Tanaka ministry when the special committee of the Council insisted that the Government withdraw the Law Courts Bill which aimed at a much-needed reform in freeing the ju-

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The emperor is not bound by the recommendation of the Privy Council, for the Council is merely an advisory body. The proclamation of a measure of the category above mentioned must state that it has been submitted to the Council; but this requirement does not restrict the emperor from following other advice. Compare Dr. Sasaki-Soichi, "Reform of the Privy Council," *Tokyo Asahi Shimbun*, Oct. 16, 1930, p. 2; Dr. Yoshino-Sakuzo, "The Privy Council," *Chuo Koron*, No. 473 (June, 1927), pp. 103-117; Dr. Shimizu-Cho, "The Privy Council," *Kokka Gakkai Zasshi* (March, 1909), Vol. XXIII, no 3, pp. 345-346. Dr. Shimizu is judge of the Court of Administrative Litigation.

[52] Baba-Tsunego, "Personalities in the Privy Council," *Kaizo*, Vol. XII, no. 10 (Oct., 1930), p. 34.

[53] *Kwampo gogai*, or "Imperial Gazette" (supplement), Mar. 8, 1927, pp. 69-70.

[54] Yoshino-Sakuzo, "Appraisal of the Houses of the Diet," *Chuo Koron* (April, 1929), no. 495, p. 65.

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diciary from administrative interference.[55] In this case it was the minister of justice, the author of the bill, who had the unenviable task of requesting the emperor on behalf of the cabinet to command the Council to return the draft of the bill. Nor did the Tanaka ministry hesitate to use the Council in 1928 to revise by an emergency imperial ordinance the Peace Preservation Law adding the severe penalty of death to "dangerous thinkers." The draft of the ordinance was submitted barely a month after the adjournment of the Diet, and the need for protection against "dangerous thoughts" was no greater in June than it had been in the previous April or May. Although the constitution (Article VIII) requires emergency ordinances to be approved by the next session of the Diet if they are to be valid for the future, ministries find it comparatively easy to secure approval of an ordinance which has been on the statute-book for nearly a year. These legislative tricks are roundly condemned in the liberal press; while the progress of parliamentary government has increasingly exposed the incongruity of such procedure.

[55] *Tokyo Asahi Shimbun*, March 1, 2, and 13, 1929, pp. 1, 2, 6, 7; *Japan Weekly Chronicle* (Kobe), March 21, 1929, pp. 284, 346.

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A NOMENCLATURE IN POLITICAL SCIENCE

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PART II*

A nomenclature is a system of names or signs, or both, used in any field of knowledge. Such systems are of value to scientists in a field if they enable positions to be seen more clearly or distinctions to be drawn more readily.

In a recent article, Huntington Cairns says: "There prevails, secondly, confusion with respect to the instrument—linguistics—with which the anthropologist, the jurist, or the social scientist must pursue his investigations and through whose medium he must state his conclusions. . . . But once the social scientist passes from these simple aspects to the realm of theory, linguistics becomes a problem and it is in his struggle with this problem that he is most envious of the symbolism of the mathematician."[1]

Confusion and uncertainty appear to be present in several sections of political science. Linguistics is a problem for us in theory; in addition, it is a serious one in teaching and in the field of research.

When a problem appears in a field of knowledge which handicaps effective work, experiments are in order, not only to analyze the phenomenon itself, but, in addition, to find ways or means by which the causes producing the unfortunate circumstance may be removed, or at least reduced. Can the apparent confusion and uncertainty among political scientists concerning the meaning of terms, labels, or intellectual positions be reduced? This is an important problem which directs our attention to the possibility of developing a nomenclature for political science.

No doubt the idea of a nomenclature in political science came from using symbols found in certain fields of knowledge, and from observing the apparent advantages which appear in some of the sciences as a result of the possession of a nomenclature. Scientists in fields having nomenclatures told us of the advantage of possessing such systems. The idea, however, was not

* Part I of this article appeared in the February, 1931, issue of this *Review*.

[1] "Law and Anthropology," *Col. Law Rev.*, XXXI, 39 (Jan., 1931).

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to have a nomenclature because other scientists possessed them, but rather to experiment to determine whether a system of symbols might have utility for the political scientist.

The experiment here reported has been carried on since the fall of 1926. In the first year, the use of a very crude and elementary set of symbols proved to possess utility for the student using them. They have been revised and rearranged. Their uses have been extended from research to theory, and from theory to teaching, with interesting and valuable results. Others have experimented with symbols and sets of notation. An exchange of ideas might be beneficial to the parties concerned.

In introducing once again this system, with statistics, accounting, and cryptography as important background influences, it should be noted that no attempt is made to establish, at the present time, a purely mathematical nomenclature. On the contrary, certain symbols, e.g., $\bar{3}$), and some methods are definitely non-mathematical; for example, the use of exponents and one of the methods suggested in measuring the relative utility of two hypothetical procedures.[2] In so far as mathematical symbols or methods are helpful, they have been and will be used. Perhaps at some future time a mathematical nomenclature will be developed which will satisfy the envy of the theorists in the social sciences; but it is doubtful whether it could be done at the present time, as will be noted in a subsequent section.

In Part I, after a general discussion of nomenclature, four primary symbols and several of the auxiliary ones were presented. Alpha, beta, and gamma were introduced as three canopy symbols covering, respectively, the three fields of (1) *assumptions*, or postulates, (2) *methods*, which include instruments used, and (3) *control* programs or devices. Each of these factors needs to be carefully considered early in approaching many of the problems in political science. h is the symbol for the human organism. While presenting this symbol, the non-mathematical use of exponents was introduced which provided for an arbitrary and qualitative range extending from 5 down to -5.[3]

[2] See Part I, p. 50.

[3] A friend maintains that all government officials are to be classified as h^5. Another suggests that they are merely a rough cross-section of a given society,

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In presenting the remaining important symbols of this nomenclature, it has been found helpful on several occasions to arrange them in groups and consider them a section at a time. This method has helped to bring out the fact that one can use three symbols or eight. It is not necessary to use the entire set at any one time, or in connection with any one problem. The first group of symbols consists of A, U, O, Z, and ☆.

A is a unitary symbol standing for an *act* or an *activity* of the human organism—h. On the one hand, in the course of a day or a week man performs many different activities; but, on the other hand, it is doubtful whether any human organism ever performs all the activities.[4]

U is a unitary symbol standing for a collection, or a *union*, of human organisms bound together for one purpose or for a variety of purposes. A commonalty of *activity* may be the basis for the establishment of a *group*. Most human organisms belong to two or more *groups*, but not to all groups.[5] There may be as many groups as there are activities.

O is a canopy symbol representing a collection of more or less integrated groups. *Society* is a fairly satisfactory label to introduce one to the content of O. It has been found helpful to define O as a number of groups of human organisms, so constituted that the members, though not belonging to all of the groups, belong to a sufficient number so that they, the human organisms, feel the pressure of similarity, and express, through activities, the spirit of unity. However, this is not the definition of O, but the definition $O_{[\text{Titus}]}$.[6]

Z is another unitary symbol standing for a human organism

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and consequently vary qualitatively from h^4 to h^{-4}. Neither of these positions may be important, but, from the pragmatic standpoint, it makes considerable difference which of the two a) is a basis underlying a given study or discussion. It is valuable to have a means of distinguishing clearly between positions occupied by various h) and groups, and also to have a method of presenting concisely the positions under consideration.

[4] To repeat, using $\exists$): A) are activities performed by h. h performs A))); but it is doubtful if any h performs ΣA.

[5] To repeat, using $\exists$): $U = h$) united. h belongs to 2 or more U), but not ΣU.

[6] $O_{[Titus]} = U$) so constituted that the human organisms, though not belonging to all the groups, do belong to a sufficient number that they, h), feel the pressure of similarity and express through their activities the spirit of unity.

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when he is performing activities for another or others. While man occupies the agent,[7] or servant, position for a group or a society, he is represented by the symbol Z rather than by h.[8]

☆ is the symbol for organization. Since organization has been defined as an arrangement of parts or organs, it is represented by five lines so arranged as to present a five-pointed star.[9]

Human Organisms perform *activities*; they belong to *groups*; and they act as agents or servants, as well as principals and masters. They organize themselves into groups, and belong to a society and to an indefinite number of other groups. There are superior groups and inferior societies. These symbols may be of special help to the student of theory, the sociologist, and the teacher.[10]

The second group of symbols comes to our attention as attempts are made partially to classify *activities*, or human organisms, on the basis of activities performed. Out of the many different classifications known in political science, the following classes and one discussed in the next group have been used sufficiently to justify one in allocating to each of them a particular symbol. The symbols in this section are B, T, R, Q, and X. P, which is discussed in the next section, might have been placed in this group.

B stands for those activities which have to do with maintenance, economics, or *business*—the support activities carried on by the human organisms for themselves, or their groups, or their society, or any combination of these or other units.[11]

[7] It probably would have been more convenient to use the $\mathfrak{Z}A$ for agency, but as agency is not thought to be as important a factor as activity, the letter in the English alphabet that stands at the other end from A was selected as the $\mathfrak{Z}$ for the agent or servant position.

[8] There are U) of Z) or ZU) as well as Z^2) and Z^{-2}). Z) are sometimes called the hired men of O.

[9] When $U_{[10]}$ is not organized, a diagonal from right to left is superimposed on the ☆. ☆$U_{[3]}$ and ⛤$U_{[10]}$. This diagonal is also superimposed on the = sign when one wishes to express *is not equal*.

[10] Σh) = mankind. Σz) = h). Σh) ≠ Z) necessarily. $\Sigma U \neq O$ necessarily. ΣA) not performed by h. $h^3{}_{[\text{leaders}]}$) = an important U). ☆U generally ≧ effective than ⛤U. [These may or may not be true, but one quickly sees a basis of distinction.]

[11] ΣBA) = A), but ΣA) ≠ B). BA) are performed either by h) as such or by h) as Z) for h), U), or one or more O).

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T stands for those activities which have to do with education or *training*. These activities are carried on in an organized and an unorganized manner, as well as effectively and ineffectively. Some have to do with the attempted development of the individual, while others are involved in so-called mass movements or mass education.

R stands for the activities which have to do with the supernatural, the unknown, the mystic, or the divine. *Religious* is the adjective frequently used to designate this class of activities.

Q stands for the activities which have to do with the protection of man, of groups, of societies, and of mankind.

X stands for those activities which are not easily or conveniently placed in any of the other classes. This *X* class can be reduced to suit the convenience of each investigator or teacher, provided the last class in the newly arranged classification is an *X* class.

From what has been said in introducing this section of symbols, it is clear that this is not for all purposes a well-rounded classification of activities; on the other hand, it has been convenient and helpful to approach certain problems of political science with these classes of activities.[12]

The third group of symbols is looked upon by many political scientists as being very important and more or less closely related. They are *P*, *S*, *G*, and *W*.

PA) are those activities which have to do either with protection or with the formation of policies for the same or the control of either the protection activities or the formation of policies for protection or any combination of these activities plus *X*. This class perhaps belongs to a classification which is not entirely distinct from the classification under discussion in the preceding section. *P* is very likely unknown, and the above stated

[12] *BZ*) may be interested in *RA*) and *RZ*), not to mention *TA*) and *TZ*). Δ**RZ*) may be *TZ*) as well. *QZ*) may perform *BA*) and *TA*) as well as *QA*).

$$\Sigma RA) \neq \bigstar A) \qquad \Sigma \bigstar A) \neq BA) \qquad \Sigma A) \div \begin{cases} BA) \\ TA) \\ RA) \\ QA) \\ XA) \end{cases}$$

* Δ stands for *a section, some,* or *a portion of.*

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definition should have [Titus] in the subscript position. *P* stands for *political*.[13]

S is the symbol for *state*. *G* is the symbol for *government*.

For some time to come, both *S* and *G* will need to be accompanied with subscript brackets indicating the particular definition that is being used.[14]

W is the ℨ for the important term "law," about which we know so little. We may feel that we know something of Justice Holmes's idea of law—$W_{[J.\ Holmes]}$—and something of John Austin's—$W_{[J.\ Austin]}$—; but we have not reached a stage of development in which the term "law"—*W*—is to be defined without a subscript bracket containing the name of the maker or author.

The careful student in political science will not only distinguish sharply between *IGW* and *IOW* or $N^{15}W$ and *INW*, but he will subdivide each of them by means of the subscript brackets containing either the name of the author or a particularized analysis of the meaning placed within the scope of the symbols used.

The fourth group of symbols is associated with an analysis of *G*. Not that this is the only analysis, but it is a fairly common one. The symbols in this section are *L*, *E*, *J*, and *D* or σ. Four phases of government stand out rather prominently in many studies: the legislative, the executive, the judicial, and, more recently, the service.

L stands for the legislative phase or section of government.[16] *E* stands for the executive phase or section of government. *J* stands for the judicial phase or section of government.

[13] $PA_{[Titus]}) = QA) \oplus^* L\mathcal{f}_1) \oplus \left\lceil \frac{A)}{QA) \oplus L\mathcal{f}_1)} \right. \oplus X$

It is noted that $PA) > QA)$.

[14] $S_{[Titus\ and\ Harding]} = \Sigma PA)$ of an *O* or $S = \overline{\Sigma PA)}$.
$G_{[Titus\ and\ Harding]} = \Sigma PZ)$ in an *O* or $G = \overline{\Sigma PZ)}$.
$S_{[Bluntschli]} = \bigstar h))$ [unified] $\oplus$ $Y_{[1]}\dagger$ $\oplus$ Sovereignty.
$^*O$ = almost addition, but not quite.
$\dagger Y_1$ = Territory, as explained below, p. 635.

[15] *N* = National or Nationalism.

[16] There are several important $\mathcal{f}$) centering around the *L* program. One of these, the policy-forming $\mathcal{f}$, has been given the subscript numeral *1*. $L\mathcal{f}_1$ = policy-forming function of the legislature.

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From time to time, and perhaps at an increasing rate, societies have been asking their respective governments, or the governments have been assuming that they have been asked, to serve them by performing certain activities, and by carrying on certain programs, which can hardly be placed in the protection category.

In the earlier stages of this work, the letter D was used to represent administrative activities, and these were defined as service activities in contrast with the protection activities; but of late it has been thought more helpful not to confine D to one definition, and to use the small Greek letter sigma, σ, to stand for the service activities. Distinct advantages are appearing as a result of this change. There is greater elasticity in the use of D.[17]

The executive branch is also subject to analysis. There are the executive and the administrative phases which appear when a horizontal line is drawn through the more or less pyramidal organization about a fifth of the distance from the apex.[18] On the other hand, this branch can be divided by drawing a vertical line through the apex dividing the departments, bureaus, or sections into (1) those which have to do primarily, although not exclusively, with protection activities, or are essential to the maintenance of the protection programs, and (2) those which have to do primarily, although again not exclusively, with service activities.[19]

[17] ∃) clarify differences when one is studying G from the standpoint of supremacy:

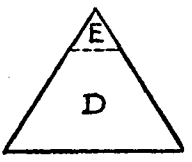
$\frac{}{E, \sigma, J}$ = a parliamentary $G = {}^{L}|\overline{G}$,

$\frac{J}{E, \sigma, L}$ = a presidential $G = {}^{J}|\overline{G}$,

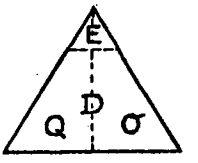
$\frac{\sigma}{E, J, L}$ = a bureaucratic $G = {}^{\sigma}|\overline{G}$, and

$\frac{E}{J, \sigma, L}$ = a monarchy (in times past) ${}^{E}|\overline{G}$ a dictatorship (at present)

[18]



[19]



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The fifth group of symbols represents some of the more important control devices which society is supposed to exercise over government, and which government is supposed to employ over society or sections thereof. The symbols in this section are Λ, V, π, ψ, C, Ω, and ϕ.

The Λ stands for the general control device called customs and traditions.[20] This symbol is called an *inverted* V. It is readily divided into $\Lambda_{[1]}$ and $\Lambda_{[2]}$. $\Lambda_{[1]}$ stands for *customs,* those habituated activities performed by the human organisms in the society. Customs are, to a considerable extent, thought of as carry-overs from preceding generations. $\Lambda_{[2]}$ stands for traditions, those attitudes or points of view which, to a large extent, have been carried over from the ancestors.

V stands for the activities of individual h) in their attempt to express themselves or to control certain situations. V_1 stands for balloting or *voting* as a control device. V_2 indicates that the *voice* is being used to express the ideas of the h. The extent to which V_2 should be, or can be, controlled or not controlled is a problem that has to be faced from time to time. V_3 stands for individual *violence.* In modern civilizations, and even in our own day, a few people try, from time to time, to use violence in expressing themselves or in attempting to control a program or a situation.

π stands for chicanery in its various forms.

ψ stands for idealism and idealistic activities, including the various reform programs and enterprises.

$C = \Lambda_{[1st]})^{21} \oplus \psi_{[1st]}) \oplus W_{[1st]}) \oplus X.$

$C_{[1]}$ = a formal written constitution.

Ω, the last letter in the Greek alphabet, stands for the last control device of society over its government. It is generally used by the h) after all other control devices have failed to produce desired results. Ω is to be clearly distinguished from either an industrial or a social revolution. Ω, as a threat, is to be included in a study of control, as well as Ω as a set of activities.

ϕ stands for power. One classification of this important term

[20] The Λ itself; i.e., Λ at times might be thought of as a cross-section of a candle-snuffer. In general, it represents *the dead hand of the past.*

[21] 1st in the subscript brackets indicates 1st class or important.

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is into police, law-making, and war-making. Another classification which may be equally interesting is that of dividing power into discretionary, defining, taxing, conscript, punishing, and contempt.[22]

These symbols, which may be primarily connected to various aspects of control problems, are very helpful to students of politics as well as of administration.[23]

The last group of symbols includes Θ and Y. Θ—theta represents a motive of an h. It is also a canopy symbol to stand for motives in general. A study in political science is seldom completed without taking into consideration the Θ) involved—not only those in the problem, but also those in the mind of the in-

[22] 3ϕ may indicate that the first classification is being used, and 6ϕ may indicate that it is the second one.

[23] To illustrate further the uses to which $\overline{\overline{3}}$) may be put, let us consider an analysis and presentation of ${}^{O}|\overline{G}$ and ${}^{G}|\overline{O}$. The O analyzed for this illustration might be the United States of America. Upon examination, suppose there appear some nineteen control devices which are thought to be more or less effective in controlling the various Δ) of $G_{[US]}$. Imagine that these nineteen are in three classes—primary, secondary and minor—and presented in the following manner:

$$
\begin{aligned}
|\overline{G}_{[US]} &= \text{Primary} \\
&= \Delta) \oplus V_1) \oplus L) \oplus C_1) \oplus W) \oplus PU_1) \oplus h^4{}_{[Leaders]}) \oplus X \\
&= \text{Secondary} \\
&= PZ) \oplus BZ) \oplus TZ) \oplus RZ) \oplus V_2 \oplus X \\
&= \text{Minor} \\
&= \textit{Other } G)IB\bigstar \oplus IGW) \oplus \psi \oplus X
\end{aligned}
$$

Is this analysis clear, and are you in a position to determine quickly as to what extent you agree and disagree with the analysis, and, in addition, to locate the points of disagreement? Would one care to write out in longhand this analysis? Would one care to read such a lengthy description? From the teaching standpoint, should such materials be written on the blackboard in paragraphs or symbolized?

A study of G US control over O [US] has also been made. It is presented in the following manner:

$$
\begin{aligned}
G|\overline{O}_{[US]} &= \text{Primary} \\
&= 6\phi \oplus N \oplus \pi A) \oplus \psi A) \oplus W) \oplus C_1 \oplus TU\bigstar) \oplus RU\bigstar \oplus X \\
&= \text{Minor} \\
&= \Delta) \oplus BA) \oplus BU\bigstar) \oplus PU) \oplus F^* \oplus X
\end{aligned}
$$

The same questions might arise in regard to these examples as appeared in the preceding set.

* F = Force.

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vestigator. When Θ is found with a zero exponent, one may proceed with some assurance, but when the minus one exponent is found attached to Θ, one needs to proceed very slowly with the development of the problem involved. The same procedure ought to be followed when Θ) are hidden, ignored, or confused.[24]

[24] In working on problems of voting in California ("Voting in California Cities, 1900–1925," *Southwestern Polit. and Soc. Sci. Quar.*, Vol. 8, Mar., 1928, 383, and "Rural Voting in California, 1900–1926," *ibid.*, Vol. 9, Sept., 1928, 198), ℨ), were developed and used extensively except when presenting the results in final form. Some ℨ) were defined in a special manner as follows:

$P_{[c]}$ = Population census	Pres. = Presidential electors	
P = Population refined	G = Governor	
$P_{[LA]}$ = Σh) in Los Angeles	Cong. = Congress	J = June 30
VP = Voting population	Assm. = Assemblymen	N = Nov. 1
V_C = Votes cast	Each city was given an	00 = 1900
E = Total school enrollment	abbreviation	18 = 1918

Among other things desired were two series of estimates for each city included in the study, one a population and the other a voting population series. The population series was derived in the following manner. The *E* series was found to be most satisfactory of the seven or eight annually compiled series considered.

$$\frac{P_{J00}}{E_{J00}} = r_{J00} \qquad \frac{P_{J10}}{E_{J10}} = r_{J10} \qquad \frac{P_{J20}}{E_{J20}} = r_{J20}$$

Then by straight line interpolation,

$$r_{J02} = .2(r_{J10} - r_{J00}) - r_{J00}.$$

When these derived r) were multiplied by their respective E), a series of P estimates was secured

$$P_{J08} = r_{J08} \cdot E_{J08}$$
$$P_{J15} = r_{J15} \cdot E_{J15} \text{ etc.}$$

These *P* series were shifted from June 30 to November 1 as follows:

$$P_{N03} = P_{J03} + \frac{(P_{J04} - P_{J03})}{3}$$

$$P_{N19} = P_{J19} + \frac{(P_{J20} - P_{J19})}{3}$$

The VP series were established in a similar way

$$VP_{J06} = \left[.6\left(\frac{VP_{J10}}{P_{J10}} - \frac{VP_{J00}}{P_{J00}}\right) + \frac{VP_{J00}}{P_{J00}}\right]\left[P_{J06}\right].$$

Thus, two measuring series were built up for each city studied (P series and VP series), and four series to be measured were compiled (VC for Pres., VC for G, VC for Cong., and VC for Assm.).

This set of ℨ) increased accuracy, cut down the amount of confusion, and aided materially in the work of studying some aspects of voting behavior in California cities.

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Y represents the physical basis of society, the environment of the h), or the living stage on which h lives and moves.

Y_1 stands for territory.

This completes a brief and rather superficial presentation of the more important symbols developed so far in this nomenclature.

PART III

A few observations might be helpful to those who have followed the presentation thus far.

Indications appear, both from publishers and mathematicians, as well as from political scientists, that if such a system as this, or another like it, were adopted in political science, textbooks, as well as monographs and articles, would be much shorter.

There is a challenge here which requires clearer thinking and greater accuracy and definiteness in presentation. The scientist will have to be more careful and the demagogue's shiftiness will be more apparent to his audiences. The one hundred and forty-five definitions of the term "state" are still present; but there has been suggested in these articles a method by which not only finer and clearer distinctions can be made but also responsibility for the accuracy of statements can be checked more easily.

It has also been suggested that new inventions and new methods should not be introduced in political science, because government would eventually capture the devices and, having captured them, would use them to its own advantage against society. A political science nomenclature captured by government might speed up the break-down of representative institutions and lessen the number of days until dictatorships or bureaucracies control. But over against all this, chemists are not held responsible when men take their ʒ) and formulæ to make high explosives for the purpose of killing men, or of destroying property. Many valuable instruments and methods are abused by ignorant and malicious h); so one can hardly consider the fear of abuse as a justification for refusing to experiment with nomenclature in political science.

May the writer now present two problems which need careful study if this nomenclature is to be developed? The first has its center in mathematics. Certain mathematical processes possess

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utility, and, at the same time, some non-mathematical methods have been helpful. With extra care, both methods are usable at this stage of development. But could our work be developed farther and more rapidly if either the mathematical or the non-mathematical method were used solely?

The second problem has to do with the development of what can be termed unitization processes. We may not be able to accomplish this, but it is felt that further advances could be made, and at a more rapid rate, if or when some, if not all, of the ʒ) have been measured, at least in terms of each other. If three units of clarity were equal to one unit of accuracy, or if one unit of religious activity were equal to four units of educational activity, what an improvement would be made in this nomenclature! Certain symbols have been referred to as unitary; but there is little, if any, standardization between them, or even necessarily present when the same ʒ is used in two different connections. There are plenty of defects in this crude instrument, even as there have been defects in other instruments in the early days of their development.

Political scientists ought to be familiar with the systems of nomenclature used in the armies and navies of the leading countries of the world, as well as with the systems of signs, labels, and symbols used in engineering and mapping. Cryptography and the elements of cryptanalysis both possess principles and methods which might aid political scientists materially in the use and development, as well as the evaluation, of nomenclature. Other experiments and studies have been made in the social sciences[25] which present other points of view and aspects different from this study. This experiment has been made, and is a success to the extent that it has become a valuable instrument in the hands of some workers in political science.[26]

[25] Professor Walter W. Cook's "Hohfeld's Contribution to the Science of Law," 28 *Yale Law Journal* 721 (1919) and 23 *Yale Law Journal* 16 (1913), and Professor Edwin A. Cottrell's studies with ʒ) and special notation have been particularly helpful and stimulating.

[26] Appreciation is here expressed to Professor Charles G. Haines, University of California at Los Angeles, for his help and his encouragement; and to Professor Robert T. Crane, University of Michigan, the late Professor Victor J. West, of Stanford University, and Captain Victor H. Harding, Palo Alto, California, for their stimulating suggestions in times past.

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A new clamp for the surgeon is of little value to him until he studies its peculiarities and uses it in the operating room. So it is with this crude nomenclature. Until political scientists use this or some other system of ʒ), nomenclature will be of little value. It is my hope that many men in this field of endeavor will build systems. From the combined and tested efforts of many scientists may come a nomenclature as valuable for political science as the chemist's system has been in his field. If there is need for improving instruments and labels in political science, why not experiment?

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Recent Trends in Federal Aid to the States. The past three years have witnessed some interesting developments in the American subsidy system, though no major changes of policy. Most significant, perhaps, is the battle royal which has raged over the federal grant for maternal and child hygiene. This piece of legislation, though adopted by an overwhelming vote in 1921,[1] soon aroused a veritable storm of opposition. It was made the basis of the test cases in which the Supreme Court of the United States inferentially approved the subsidy system, and expressly denied its own right to interfere.[2] It became the target for broadside after broadside from the editorial guns of the American Medical Association. The organized pressure of the opposition proved very effective, and federal appropriations for coöperation with the states in child health work were discontinued. The federal government retired from the field in 1929.

The friends of federal participation, however, have refused to concede defeat. At every subsequent session of Congress they have urged the adoption of new legislation reëstablishing federal-state coöperation, and in the closing days of the last session they almost achieved their goal. A bill appropriating one million dollars annually until 1934, to be paid to the states for federally supervised maternal and child hygiene work, passed the Senate by a vote of fifty-six to ten on January 10, 1931.[3] This bill, introduced by Senator Jones of Washington, was very largely a replica of the Sheppard-Towner Act of 1921 which had been permitted to lapse. But the corresponding bill which passed the House a little later varied in a number of essential respects. It authorized federal aid to the states, not only for child hygiene, but also for "the prevention of disease and the promotion of health among the rural population."[4] Rural health was to be fostered by means of local health units or organizations, and this phase of the grant was to be administered by the public health service of the Treasury Department. General supervision was to be exercised by an ex-officio federal health coördinating board, composed of the surgeon-general of the public health service, the chief of the children's bureau, and the commissioner of education. Annual appropriations were provided, mounting gradu-

[1] *Congressional Record*, Vol. 61, pt. 8, p. 8037 (House vote).
[2] Mass. v. Mellon and Frothingham v. Mellon, 262 U.S. 447.
[3] S. 255, 71st Cong., 2nd. Sess.
[4] H.R. 12995, 71st Cong., 2nd Sess.

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ally to three million dollars by 1936. The child hygiene portion of this ambitious program was to continue under the direction of the children's bureau. Thus, under the plan proposed by the House of Representatives, the promotion of maternal and infant welfare became a minor part of a general scheme of federal supervision over rural health activities. This innovation proved too radical for the Senate, and as a result no agreement was reached by the two houses before the end of the session. It seems clear, however, that some form of federal aid for child hygiene is regarded with favor by a substantial majority in Congress, and that the opposition is stronger in lung power than in votes. The next session will probably witness a resumption of federal participation in child health activities.

The withdrawal of federal support from this work has had a most unfortunate effect upon state programs. Only sixteen state legislatures have appropriated amounts sufficient to equal the combined federal-state expenditures of previous years. In most of the other states, child health work has been seriously curtailed. Physicians and nurses have been dismissed, and coöperative arrangements with counties and local communities have been canceled in many cases. In a few states, legislative appropriations for maternal and child hygiene were made contingent upon the availability of federal funds, so that the absence of federal aid has necessitated a complete cessation of state activity in this field. Interest in child health work seems to have diminished everywhere—even in those states whose legislatures have come to the rescue with additional appropriations.[5] Nor need this occasion surprise, for even state workers have long recognized the prestige value of federal participation.

A considerable number of bills have recently been introduced in Congress authorizing federal subsidies to the states for a wide variety of purposes. Senator Hatfield, of West Virginia, proposed federal aid "in the care, treatment, education, vocational guidance and placement, and physical rehabilitation of crippled children."[6] Nye, of North Dakota, suggested coöperation with the states for the promotion of rural education, to the extent of one hundred million dollars of federal funds annually. The bill which most nearly succeeded in becoming law, however, was introduced by Senator Wagner, of New York. It authorized the federal government to coöperate with the states in the establishment of

[5] "The Seven Years of the Maternity and Infancy Act," Publication No. 203 of the U. S. Children's Bureau, 1931, p. 14.

[6] S. 5961, 71st Cong., 3rd Sess.

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public employment bureaus, and made annual appropriations of four million dollars for that purpose. The usual scheme of federal aid was followed. A state must specifically accept the federal offer, in order to be eligible for funds, and must designate a coöperating state agency; it must match its federal allotment dollar for dollar; it must submit a plan of activity for the approval of federal officials. Under the terms of the bill, the United States employment service was directed to pass upon state programs, and was given the status of a separate bureau in the Department of Labor.

This proposal met with such favor in both houses of Congress that its passage seemed reasonably assured. As a result, the opponents of the subsidy system waged an especially bitter fight. The old arguments of the states' rights school were pressed into service once more—slightly shopworn from the passing of time, but still ready for effective use. It was freely urged, for example, that diverse conditions throughout the nation would cause the collapse of any federal attempt to relieve the unemployment situation. "Sketch in your minds for a moment the different conditions in different sections of the United States as to labor," urged Congressman Tucker, of Virginia. "New England with its highly skilled labor, many of whom are foreigners, many of them French-Canadian, and the great body of foreign laborers in the states of New York, Pennsylvania, and New Jersey; the negro laborer of the South, with his peculiarities and interesting characteristics; the Mexican laborer along the border of Texas and the South; the Japanese and Chinese laborers of the Pacific Coast; and the vigorous, virile laborers of the great Northwest, many of original American stock; all of these different elements are provided for today under the states, and their laws on this subject are adapted to them and their characteristics; and now we seek to do away with this and establish a national employment agency with its own rigid conditions which might suit some of the sections but would be very injurious to others. As a basic proposition, the bill seeks to destroy the rights of the states to adapt their agencies to their own conditions and turn it over to one central agency in Washington."[7]

The same argument, phrased in but slightly different terms, had previously been used against practically every proposal to grant a conditional federal subsidy to the state governments. It had been urged as a reason for defeating the federal-state highway program, and subsequently the United States bureau of public roads demonstrated its

[7] *Congressional Digest*, Jan., 1931, p. 17.

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fallacy by approving radically different types of road construction for different sections of the country, according to local conditions and local needs. It had been used in debate against the Sheppard-Towner Act, and later the children's bureau showed its willingness to accept any state plan which seemed to fit local requirements, provided only federal minimum standards were met. Yet it served as an argument against the Wagner unemployment bill, despite the plain provision of the bill that plans should originate with the state in every instance, and should merely be subject to a federal veto.

Senator Bingham also took up the cudgel against Wagner's proposal. "It is objectionable," he declared, "because it seeks to seduce or bribe the individual states to surrender a vital power of self-government."[8] But these arguments seem to have carried little weight; for the Wagner bill passed both houses by substantial majorities, and reached the president a short time before the close of the session. President Hoover issued a prompt veto message. This measure "cannot be made effective for many months or even years," he stated. "It is not only changing horses while crossing a stream, but the other horse would not arrive for many months." By executive order, the president then proceeded to put into effect most of the provisions of the Wagner bill, though, of course, without the subsidy feature. Whether the next Congress will attempt to revive the proposal is problematical. A great deal will depend upon business and employment conditions at that time.

Although new subsidy legislation has fared rather badly during the last three years, several of the subsidy laws already in effect have been strengthened by materially larger appropriations. Federal aid for highways, especially, has mounted rapidly. The seventy-five million dollar annual appropriation, in effect for a number of years, was increased to one hundred and twenty-five millions by act of 1930; and in December of that year Congress appropriated an additional eight million dollars to stimulate road construction, and thus meet the emergency of unemployment. Federal payments to the states for coöperative agricultural extension work have risen from a little less than seven million dollars in 1927 to slightly more than eight millions in 1930. National Guard allotments have also increased, by about one million dollars. Federal aid for forest fire prevention, always a small sum, was nearly doubled during the three-year period. Additional appropriations for vocational education, authorized for the immediate future, will naturally stimulate this work.

[8] *Congressional Digest*, Jan., 1931, p. 12.

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Even the most aggressive opponents of federal aid for new projects seem to accept the existing system of subsidies as an established custom, and raise no serious objection when the usual appropriations for this purpose are continued or even increased. When the bill authorizing additional payments to the states for vocational education came up for debate in the Senate, the implacable Senator Bingham rose to inquire whether its author "would not be willing to permit the territories to benefit under the act, as well as the states." He then offered a series of amendments, which were adopted, inserting the words "and territories" and "states," at appropriate places. A strange contrast, indeed, to his bitter attack upon the proposed child hygiene law, and his scathing denunciation of the Wagner unemployment bill as an attempt to bribe and seduce the states! But such changes of front are taken as a matter of course in legislative circles. Most legislators agree with Emerson's dictum that "consistency is the foible of weak minds."

Despite the increased appropriations for a number of coöperative activities, the total of federal payments to the states actually decreased slightly during the three-year period. For the fiscal year 1927, the amount was $136,659,786.47; in 1930, federal payments totalled only $135,373,607.01—a reduction of slightly more than one million dollars. Comparison of the 1930 figure with that of the peak year 1925, when $147,351,393.22 was paid to the states from the federal treasury, would seem to indicate a waning interest in the subsidy system. Actually, however, the decrease has been due entirely to reduced disbursements for highway construction, which have more than counterbalanced the increases in the other fields. During a considerable period, the bureau of public roads had at its disposal funds authorized and appropriated for earlier years, but not expended within the years for which they were intended. These funds, carried over, always furnished a surplus in addition to the regular annual appropriation. By 1930, however, the surplus of former years had been almost entirely expended, so that federal participation in highway construction was limited very nearly to the year's appropriation of seventy-five million dollars. Next year, with the regular appropriation for highways increased to one hundred and twenty-five millions, and eighty millions of emergency funds available, the total of federal payments to the states will probably pass the two-hundred-million mark.[9]

[9] The following table shows the distribution of federal aid for the fiscal year ending June 30, 1930:

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During the past three years, several of the federal bureaus charged with the administration of subsidy laws have demonstrated very effectively their determination to uphold federal standards and insure the proper use of federal funds. The extension service of the Department of Agriculture, in charge of coöperative agricultural extension work, recently refused to approve a new state extension director who had been selected for partisan reasons; and after political pressure upon the service had proved unavailing, a properly qualified director was appointed by the state officials. A short time previously, another state had been compelled to return to the federal treasury $21,000 of extension money which had been used improperly. Less than a year ago, the failure of two state foresters to furnish satisfactory plans for forest fire protection resulted in the withdrawal of federal support from the fire protection programs of those states. It seems clear, therefore, that federal officials have lost their early fear of incurring state displeasure, and have decided to enforce adequate minimum standards, even at the risk of a temporary suspension of state coöperation. Some bureaus—notably the bureau of public roads—adopted such a policy from the outset, and have succeeded in retaining the good will and respect of the states without lowering their requirements in any way. Other bureaus, however, have at times hesitated to impose penalties for minor infractions or to make good their threat of withdrawing federal funds, lest their insistence upon satisfactory performance result in the destruction of friendly federal-state relations. The forest service and the extension service have long been in this latter group, and their recent change of front apparently indicates a more uniform, more stringent, and more effective administration of the subsidy laws.

Federal-Aid Payments to the States for the Fiscal Year 1930

Support of agricultural colleges	$ 2,400,000.00
Support of experiment stations	4,320,000.00
Coöperative agricultural extension work	8,732,716.69
Vocational education	7,682,323.32
Vocational rehabilitation	936,527.07
Highways	75,880,862.84
National Guard	32,619,798.00
Forest fire prevention	1,252,444.69
Distribution of nursery stock	78,763.35
Forestry extension work	51,688.37
State fund under oil leasing act	1,388,931.08
State fund from sale of public lands	30,451.60
	$135,373,607.01

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Agricultural extension work is rapidly acquiring the status of a profession. The salaries of county agents are somewhat higher than formerly, and the turnover is lower. Interest is increasing in professional training courses for experienced extension workers, and such courses are now given in the summer sessions of at least five universities.[10] Some of this work is of post-graduate grade. Present plans contemplate the development of several graduate training centers at leading universities, where seasoned county agents may secure additional training and work for higher degrees. A few states already encourage their extension workers to take advantage of existing facilities for further training by granting them sabbatical leaves of absence. Work among the negroes of the South has recently been improved by means of special summer schools for negro agents.

In various ways, therefore, the grants from the federal treasury to the states are establishing more firmly their claim to a permanent place in the scheme of American administration. Every year they receive the support of additional precedents. They are rapidly becoming a habit. Still more important, they are producing results. Accordingly, while vehement protests are still raised against specific subsidy laws, there is little reason to doubt that the general scheme of federal aid will continue unchanged.

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Congressional Redistricting in Missouri. Congressional redistricting became a matter of concern in 32 states as a result of the passage of the national census and reapportionment act of June 18, 1929, and the statement submitted to Congress by the president on December 4, 1930, as required by that act.[1] Partisan, sectional, community, and personal interests combine to make the problem of redistricting a complex one, and a considerable number of the state legislatures meeting in 1931 have found it difficult, if not impossible, to draft bills which a majority in both houses would support and which the governor would approve. This was true especially in states where the majority in one or both branches of the legislature and the chief executive were members of different political parties.

[10] Cornell University and the Universities of Wisconsin, Colorado, Utah, and Oregon. Ohio State University included such a course in its 1930 summer curriculum.

[1] 46 *Stat. L.*, 21, 26. *Congressional Record*, 71 Cong., 3 sess. (1930-31), Vol. 73, pt. 1, pp. 234-235.

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Missouri, with a loss of three seats, heads the list of 21 states whose representation in the seventy-third and succeeding congresses will be reduced, and which, accordingly, are confronted with the alternatives of either creating new districts before the November elections in 1932 or facing the uncertainties of an election at large of their entire congressional delegation. The existing districts in Missouri were formed by an act of the General Assembly, approved March 16, 1901, following the passage by Congress of the reapportionment act of January 16, 1901, which increased the number of Missouri's representatives from 15 to 16.[2] Though Congress added "compactness" to "contiguity" and "approximate equality of population" as requirements for single-member districts, the Democratic majority in the Missouri legislature, with the approval of the governor, who was of the same party, were able so to distribute their party's voting strength among the several districts as to make possible the election in 1902 of 15 out of 16 members in Congress, though the Democratic nominees received only about 55 per cent of the total vote cast. Apparently, the majority party leaders who drafted the redistricting bill found it impracticable to attain even a modest approach to approximate equality of population. The smallest district, with 152,424 persons, and the largest, with 290,187, were among the three districts created in St. Louis city and county. Districts in rural areas varied from 153,764 to 265,264. Several met the requirement of compactness only by an extremely liberal interpretation of that term. Counties in the center of the state along the Missouri River, which could be counted upon for substantial majorities, were employed in an ingenious manner to make safely Democratic certain districts otherwise about evenly divided between the two parties. One of these districts, the seventh, somewhat resembles a hammer in outline, with the head formed by a tier of three Democratic counties and the handle by a tier of five Republican counties. The fourteenth district extends from the Mississippi River along the Arkansas line, one and two counties wide, almost to the western border of the state. Compact groups of Republican counties in central and north-central Missouri were divided between two or more districts, and similar groups of counties in the south-central and east-central sections were joined with a sufficient number of contiguous Democratic counties to insure a reasonably safe majority for the latter. Republican voting strength in St. Louis city and county was so concentrated in the large tenth district as to make possible Democratic majorities in the other two city districts.

[2] *Missouri Laws, 1901,* p. 87; 31 *Stat. L.,* 733.

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Thus entrenched behind congressional districts of their own making, and equally favorable state senatorial districts which were formulated the same year by the governor, secretary of state, and attorney-general of their own party after the General Assembly had failed to pass a reapportionment act, the Democrats in Missouri were well prepared to combat the increasing strength of the opposition party. Since 1904, Missouri voters have given majorities to the Republican presidential electors five out of seven times (reaching landslide proportions in 1920 and 1928), have elected four Republican governors (three since 1920), and have sent three Republicans to the United States Senate for one term each; but only in the presidential election years 1920 and 1928 during this period of 26 years was the Republican party able to secure a majority of the congressional delegation, and only in 1920 was it able to interrupt the continuous Democratic majorities in the state senate. Much of the time it was in a decided minority in both of these legislative bodies.

Determined, if possible, to force a rearrangement of the congressional districts in 1911, and encouraged by the possibilities inherent in the initiative and referendum amendment to the state constitution adopted in 1908, the two Republican members in the House of Representatives from St. Louis sought to eliminate a committee amendment to the pending reapportionment bill in the third session of the Sixty-first Congress which specifically required that redistricting in each state should be done "by the legislature thereof." They asserted that the committee had offered the amendment at the request of certain Democratic members from Missouri as a clever "joker" to prevent a fair redistricting of the state. Unsuccessful in committee of the whole, they were victorious in the House by the close vote of 161 to 158. All of the ten Democratic members from Missouri voted in the negative, while the five Republicans present voted affirmatively.[3] The Senate did not act upon this bill, and when another was reported out of committee in the first session of the next Congress it included the language previously stricken out. Representative Bartholdt, Republican, from the large tenth district in St. Louis, and Representative Hamlin, Democrat, from the gerrymandered seventh district, engaged in a brief but heated

[3] *Congressional Record*, 61 Cong., 3 sess. (1910-11), Vol. 46, pt. 3, pp. 2228-30. The reapportionment act of 1901 had expressly provided that additional representatives in each state, and all the representatives in case the number was decreased, should be elected at large "until the legislature of such state in the manner herein described shall redistrict such state." 31 *Stat. L.*, 733, 734.

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debate condemning and defending, respectively, the existing congressional districts in Missouri. During the discussion in committee of the whole on this bill, it was charged that the adoption of this provision would prevent the voters from acting directly upon the matter of congressional redistricting in the rapidly growing number of states which, since 1898, had adopted, or were considering, constitutional amendments permitting the use of the initiative and referendum for statutory legislation. An amendment to eliminate this clause was defeated.[4]

Senator Burton, of Ohio, a state which adopted the initiative and referendum in 1912, offered an amendment to the House reapportionment bill on the floor of the Senate which directed that congressional redistricting in each state should be done "in the manner provided by the laws thereof" instead of "by the legislature thereof." This amendment was accepted by a vote of 39 to 28, and subsequently was concurred in by the House without further debate. Senators Stone and Reed, Democrats of Missouri, opposed the amendment, though the latter offered a substitute which provided for redistricting in each state "by the legislature or by the people thereof."[5]

The Democratic party had a majority in both houses of the General Assembly in 1911; but, inasmuch as the number of Missouri's representatives in Congress was not changed by the reapportionment act of that year, and the existing districts were distinctly advantageous to that party, no serious attempt was made to formulate a redistricting measure which would meet with the approval of the Republican chief executive. Though Governor Hadley and the Republican state committee sought a revision of the state senatorial districts by means of an

[4] *Congressional Record*, 62 Cong., 1 sess. (1911), Vol. 47, pt. 1, pp. 673, 701-704.

[5] *Ibid.*, pt. 4, pp. 3436, 3556, 3604. 37 *Stat. L.*, 13, 14. The apparent contradiction in the position taken by Senator Reed probably was due to a suspicion, real or fancied, entertained by the Missouri Democrats in Congress that the Republicans had no expectation of using the initiative and referendum to secure congressional redistricting, but rather contemplated taking advantage of the presence of a member of their party, Herbert S. Hadley, in the governor's office to test the dubious authority of the chief executive to proclaim new congressional districts under Sections 10730 and 10731, *Missouri Revised Statutes, 1929*, which provide that electoral districts shall be the same as the congressional districts and empower the governor to form new electoral districts when a congressional reapportionment act increases or diminishes the number of electors to which Missouri is entitled. Republican members of the House denied any such intention, asserting that the above statutory provisions were clearly inapplicable. *Congressional Record*, 62 Cong., 1 sess. (1911), Vol. 47, pt. 1, pp. 701-703.

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initiated amendment to the state constitution—a procedure which was frustrated by the refusal of the Democratic secretary of state to file the initiative petitions and the denial of a writ of mandamus by the Supreme Court to compel their acceptance[6]—no effort was made to secure congressional redistricting in this manner, and Democratic victories in national and state elections in 1912, 1914, and 1916 probably would have meant the defeat of such a proposal, if submitted to popular vote.

A majority vote of 171,518 received by the Republican presidential electors in 1920 was sufficient to overcome the handicaps imposed upon that party by the congressional and state senatorial districts formed in 1901. With 14 out of 16 representatives in Congress, few of whom had any reason to desire a perpetuation of the existing districts, a majority in both houses of the state legislature, and the governorship, the G. O. P. in Missouri appeared to be in a commanding position for purposes of redistricting. A congressional reapportionment bill was reported to the third session of the Sixty-sixth Congress which provided for a House membership of 483, thus obviating the necessity of reducing the representation of any state. Sentiment in favor of retaining the existing membership of 435 was strong, however, and an amendment substituting this number was approved by a vote of 269 to 76. At that time it was estimated that Missouri would lose two seats. Only two members of the Missouri delegation of 11 Democrats and five Republicans in the House voted for the amendment, both of whom, one a Republican and the other a Democrat, were from districts in St. Louis city and county. The bill passed the House without a record vote, but was pigeonholed in the Senate committee.[7]

A reapportionment bill proposing a House membership of 460 was reported to the first session of the Sixty-seventh Congress. Maine and Missouri were the only states to lose a seat under this plan. Section 3 of this bill provided that, should the number of representatives from any state be reduced, and should the legislature thereof in session between the passage of the act and the next congressional election fail to redistrict the state, or should it not be in session during that time, then the governor, secretary of state, and the attorney-general of such state should be empowered to formulate new districts. There is a strik-

[6] State *ex rel.* Halliburton v. Roach, 230 Mo. 408, 130 S.W. 689.

[7] *Congressional Record*, 66 Cong., 3 sess. (1920-21), Vol. 60, pt. 2, pp. 1679, 1682, 1693.

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ing resemblance between this proposal and a section in the Missouri constitution which makes it the duty of these three executive officers to redistrict the state for the election of state senators in the event that the General Assembly fails to perform this task at its first session following each decennial census.[8] Congressmen Newton and McPherson, Republicans from the tenth and fifteenth Missouri districts, respectively, addressed the House in favor of this provision, and an amendment to eliminate it was defeated in committee of the whole by a vote of 160 to 75. A motion to recommit the bill, however, carried 146 to 142. Twelve Republican members from Missouri opposed this motion, one was paired with a Democratic member against it, and announcement was made that the fourteenth would have voted "nay" had he been present. The other Democratic member supported the motion to recommit.[9]

Despite these failures on the part of Congress to agree upon a reapportionment bill, the Republican leaders in Missouri decided not to forego the splendid opportunity which a majority in both houses of the General Assembly and the governorship offered for the rearrangement of the districts formed in 1901. A redistricting measure was passed during a second extra session of the legislature in November, 1921, and approved by the governor, which indicates that the Republican interpretation of the requirements fixed by Congress for single-member congressional districts was almost as liberal as that adopted by the Democratic party twenty years before.[10] The contours of some of the proposed districts defy description. A group of strong Democratic

[8] *Missouri Constitution* (1875), Art. IV, sec. 7. The Missouri supreme court in 1921 held that the initiative and referendum amendment adopted in 1908 (Art. IV, sec. 57), in vesting all legislative power in the General Assembly and the people, had the effect of repealing Section 7, which conferred conditional power upon these three executive officers in the matter of state senatorial reapportionment. The fact that the court divided on a strictly partisan basis in reaching a four-to-three decision, the tenor of the majority and dissenting opinions, and the failure of the court in 1910, and again in 1912, in cases involving the provisions of Section 7, to question its continued operation, despite the amendment of 1908, give support to the contention that this decision is of doubtful validity. State *ex rel.* Lashly v. Becker, 290 Mo. 560, 235 S. W. 1017. For the earlier decisions, see State *ex rel.* Halliburton v. Roach, 230 Mo. 408, 130 S. W. 689, and State *ex rel.* Barrett v. Hitchcock et al, 241 Mo. 433, 146 S. W. 40.

[9] *Congressional Record*, 67 Cong., 1 sess. (1921), Vol. 61, pt. 6, pp. 6308-10, 6340-45, 6348.

[10] *Missouri Laws*, Second Extra Session, 1921, p. 17.

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counties in the northwest and two others in the center of the state were combined with several evenly divided counties to create a district normally Democratic by a large majority. Other strong Democratic counties in the central, west-central, and southwestern sections of the state were so distributed among a number of districts as to make them very close in a Democratic year but safely Republican in other years. Four strong Democratic counties north and east of the Missouri River were joined with certain wards in Kansas City to form a district apparently designed to waste the voting strength of that party. St. Louis and St. Louis county were divided into four instead of three districts, and the former eleventh district in St. Louis, which had consistently elected a Democratic congressman since 1901, was disintegrated. Based upon the census returns of 1920, there was a difference of approximately 42,000 persons between the smallest and largest districts, a much nearer approach to approximate equality of population than that reached by the Democrats in 1901. Thus by a skillful concentration of opposition voting strength in three districts, the creation of at least six rather closely divided districts, and the virtual certainty of carrying all four districts in St. Louis city and county in addition to one district in each of the north-central, south-central, and southwestern sections, the Republican legislative leaders had assured their party of at least seven or eight of the 16 representatives even in a Democratic year, and 13 or more in a Republican landslide such as occurred in 1920. Through the efforts of the Democratic state committee, this redistricting measure, together with 13 other acts passed by the General Assembly in 1921, was subjected to a referendum vote in the general election of 1922. A marked reaction favorable to the Democratic party following the presidential election of 1920, and the strong tendency of the Missouri voter to vote "no" on referred measures, contributed to the defeat of the bill by a majority of 145,182 votes. All of the other thirteen bills likewise were defeated by large majorities.

The resumption of efforts to secure the passage of a congressional reapportionment bill in the first session of the Seventieth Congress found a considerable number of both Democratic and Republican members from Missouri seemingly more concerned about the effect of the probable loss of three or four seats upon the prestige of the state, the consequences of increased representation for urban areas, and the likelihood of primary contests against each other than about the possibilities of partisan advantage inherent in redistricting. Representative Lozier, Democrat, from the second Missouri district, who was a

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member of the House census committee, signed a minority report upon the proposed bill, and on the floor of the House advocated an increase in House membership, opposed reapportionment prior to the 1930 census, and offered amendments to eliminate the provision for automatic reapportionment in 1931 and subsequent decennial periods, and to substitute the method of equal proportions for that of major fractions. Representative Cochran, Democrat, of St. Louis, though opposed to the delegation of authority to proclaim a reapportionment should Congress fail to act, was a vigorous exponent of the cause of proportional representation for urban sections and states, and frequently emphasized what, in his opinion, would be the desirable results flowing therefrom with respect to the evils of the Eighteenth Amendment. He recognized that in redistricting the state it would be almost impossible to preserve the strong Democratic district in St. Louis which he represents. The final vote on the reapportionment bill in the House during the first session of the Seventy-first Congress found seven Republican and three Democratic members from Missouri supporting the bill and three Republican and three Democratic members in opposition. Two of the Democrats who voted "yea" on the final roll-call previously had supported a motion to recommit. In the upper house, Senator Hawes, Democrat, of St. Louis, voted for amendments which proposed to eliminate automatic reapportionment, to substitute the method of equal proportions, to omit the provision with respect to future decennial periods, and to exclude aliens in apportioning representatives, and voted against the bill on final passage. Senator Patterson, Republican, of Kansas City, voted in opposition to all of the above amendments and supported the measure in the final vote thereon.[11]

Anticipating that the Fifty-sixth General Assembly, meeting in January, 1931, would be confronted with the problems of both congressional and state-senatorial redistricting, Democratic party leaders were especially active in their efforts to secure the election of a majority of the members of both houses of the legislature in November, 1930. Virtually certain of retaining control of the Senate, they concentrated their attention upon the House of Representatives, in which Republican members had been in the majority since 1918. They were aided by the agricultural and business depression, the absence of a presidential campaign, and public charges of inefficiency and malfeasance directed

[11] *Congressional Record,* 70 Cong., 1 sess. (1927-28), Vol. 69, pt. 8, pp. 9009-18, 9094; 70 Cong., 2 sess. (1928-29), Vol. 70, pt. 2, p. 1501 ff; 71 Cong., 1 sess. (1929), Vol. 71, pt. 2, pp. 1861, 1863, 2065, 2078, 2159; pt. 3, 2457-58.

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against several of the Republican elective office-holders. The Republican party organization was less active in this respect, possibly because it considered securing control of the Senate quite unlikely in a mid-presidential year, and was content to rely upon the governor and the lower house to force satisfactory compromise measures from the Senate. Furthermore, it could contemplate with some degree of confidence the possibility of an election at large and an opportunity to secure the adoption of more favorable redistricting bills through the initiative and referendum in 1932.[12]

On the occasion of a meeting of the Democratic state committee in May, 1930, a newspaper poll was taken to ascertain the views of the leaders of that party relative to redistricting. This poll revealed a wide variety of attitudes and opinions. Some emphasized the necessity of being fair to both parties, while others were quite frank in asserting that the party should seek to preserve or strengthen its advantage in both sets of districts. A few expressed willingness to give proportionate representation to the cities, but a larger number appeared skeptical that this would be done, especially in the state senate. Mr. Charles M. Howell, of Kansas City, chairman of the state committee, replied as follows: "I am in hopes that the Democrats can elect a majority in the House as well as in the Senate; then we can approach the subject without partisan bickering. There is no politics—or should be none—in the laying out of districts. They should be compact in form and the population should be as nearly equal as practicable. Every community should have the representation to which its population entitles it. Democrats, if in control, must be fair because a Republican governor will have the last word about the laws passed."[13]

Success attended the efforts of the Democratic party organization in the election of 1930. They secured a majority of four in the Senate and 22 in the House of Representatives. Governor Caulfield, in his biennial message to the General Assembly on January 8, 1931, especially emphasized the need for state senatorial redistricting in accordance with the mandate of the constitution, and in order to eliminate the gross inequality in population between the existing districts.

A number of congressional and senatorial redistricting bills were in-

[12] The United States Supreme Court held in 1916 that congressional redistricting in Ohio through the initiative and referendum was in keeping with the provisions of the reapportionment act of 1911, and was not contrary to Art. I, sec. 4, of the federal constitution. Davis v. Hildebrant, 241 U. S. 565.

[13] *St. Louis Globe-Democrat*, May 15, 1930.

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troduced in both houses of the legislature. No definite attempt appears to have been made to formulate bills which would draw support from both parties, and consequently the matter of redistricting became a party issue at the outset. Subcommittees of the House redistricting committee and the Senate committee on elections were appointed to consider the several congressional redistricting measures introduced and to draft substitute bills. The majority members of these subcommittees agreed upon a bill which was reported favorably to both houses on February 26. An analysis of this bill, based upon the votes by counties and by wards in St. Louis and Kansas City for Republican and Democratic candidates for judges of the supreme court in recent elections, indicates that, if adopted, it would make almost certain the election of Democratic congressmen in six of the 13 districts even in presidential years, and eight or nine of the 13 in other years.[14] To obtain even this rather conservative partisan advantage, it appears to have been necessary for the subcommittees to ignore the requirement of compactness. The proposed first district in the northeast section of the state extends from the Iowa line, two and three counties wide, to include three counties south of the Missouri River. This district has the dual advantage of being safely Democratic and yet including several strong Republican counties. Democratic counties in the central part of the state were used, as in 1901, to yield majorities in districts otherwise rather evenly divided. Three strong Democratic counties situated north and east of the Missouri River were included in a northwest district to make virtually certain the election of a Democratic representative. St. Joseph, the third largest city in the state, is in this district. Certain wards in Kansas City, and all but one of the townships in Jackson county, were joined with four other counties to form a district one county wide and five counties long on the western border of the state. Fourteen Republican counties in the south and southwest were grouped together in a right-angled district which effectively concentrates a large block of the voting strength of that party. The proposed twelfth district, resembling a door key in appearance, centers in the Ozark region and extends south to the Arkansas line to pick up a strong Democratic county and

[14] An unusual amount of scratch-ticket voting in Missouri in 1928 gave the Republican candidate for supreme court judge a majority vote in two of the proposed districts which normally would yield substantial Democratic majorities. On the contrary, similar party irregularity in St. Louis resulted in a Democratic majority in one of the proposed districts in that city and a very close vote in another.

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east so as to include Greene county and Springfield, the fourth city of the state. This is a rather close district. St. Louis county was joined with three other counties to the south to form a strong Republican district. One of the three districts proposed for the city of St. Louis was drawn in an attempt to preserve as nearly as possible the existing eleventh district, which has consistently elected a Democratic representative. A difference in population of approximately 20,000 between the largest and smallest of the proposed districts compares most favorably with a difference of 140,000 between the existing districts when formed in 1901, which had increased to almost 600,000 in 1930.

Republican party leaders promptly denounced the committee substitute bill as "an unfair apportionment politically," and threatened an executive veto, or a popular referendum if the governor approved the measure. They expressed a willingness to accept a bill which normally would give the Democrats seven of the 13 districts. On the contrary, the *St. Louis Globe-Democrat*, an independent Republican daily, commended the bill in an editorial which asserted that "its division of the geography, population, and political sentiment of the state seems to be so fair and equitable that the bill might almost be called a model in this class of legislation." The fact that the measure awarded proportionate representation to the cities was a decided point in its favor from the viewpoint of the urban press, regardless of party.

The House of Representatives ordered this bill engrossed on March 24, subject to a few minor changes designed to strengthen several Democratic districts. Republican members of the House voted against the measure without exception. Dissatisfaction among a number of the Democratic members of Congress with some of the proposed districts, the objections of Democratic state representatives from southwestern counties to being placed in a congressional district so overwhelmingly Republican, and dissension between factions of the party in Kansas City over the boundaries of the two districts into which that city was divided, alienated sufficient Democratic support so that, although the bill was made a caucus measure, only 67 of the 86 Democrats were present and voted "yea" when it came up for final passage on March 31. Since the 56 Republican members present voted solidly against the bill, it failed by nine votes to receive the required constitutional majority of 76. Similar dissatisfaction in the Senate, where the Democrats had a majority of only four, made it appear for a time that some compromise measure must be formulated or no congressional redistricting bill could be passed.

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After several attempts had been made to unite Senate Democratic members in support of the committee substitute bill, a number of changes were agreed upon at a caucus meeting on April 2 which were designed to increase Democratic majorities in two districts without endangering them in others, and which met the objections of two veteran Democratic congressmen against being placed in the proposed second district with a third Democratic veteran who would have a distinct advantage because most of his present district was included in the new one. Three days later, the Senate Democratic caucus reversed its stand on these changes and decided to support the committee substitute bill as first reported except for a few minor shifts of counties in the southeast designed to add a thousand Democratic votes to the slender majority anticipated in the proposed twelfth district. The bill thus amended was ordered engrossed by the Senate on April 7, despite vigorous efforts on the part of the Republican minority to force changes in it or to delay action; but the illness of one Democratic member, and the positive refusal of another to support it unless the changes first agreed upon were adopted, resulted in failure by one vote on April 9 to secure the necessary constitutional majority of 18 for its final passage. The indisposed member also had opposed the bill, but pressure brought to bear upon him by party leaders produced the desired results, and he appeared the following day to cast an affirmative vote when the previous action was reconsidered.

While Democratic leaders were endeavoring to secure signed pledges from at least 76 of their number in the House in support of the Senate bill, Governor Caulfield delivered a special message to the General Assembly on April 14 severely criticizing the action of the majority, condemning the irregularity of the proposed districts, and suggesting an alternative bill which was more in line with his conception of a fair and proper redistricting. The alternative districts proposed by the governor are a much closer approach to the requirement of compact territory than those included in the Senate bill; they coincide more closely with the common economic interests of counties in the several sections of the state; and the approximate difference of 38,500 in population between the districts is only 5,000 greater than that of the Senate bill. From the standpoint of partisan fairness, however, an analysis similar to that made in the case of the committee substitute bill indicates that although the Republicans could not be certain of more than five of the 13 districts in mid-presidential years, they would have a fair opportunity to win in three other close districts, and in presiden-

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tial years, if the future can be judged by the elections of the past decade they could count on a majority in at least nine, and possibly ten, of the districts. This result was made possible by the concentration of many of the strongest Democratic counties in one east-central district and two west-central districts, the latter including Kansas City, though to do so made it necessary in two instances to depart noticeably from the principle of compactness.

Although exact comparisons are difficult, if not impossible, in such cases, it appears evident that the governor's proposal was not sufficiently neutral politically to force the Democratic leaders to reconsider their action; and if he anticipated a favorable response to his message, delivered so late in the session, he misjudged the temper of those leaders. A short time after the governor had addressed the Assembly, the House redistricting committee reported favorably on the Senate bill. A Republican member of the committee had offered the governor's plan as a substitute, but it was not considered, and when it was submitted on the floor of the House the next day it was rejected promptly by a vote of 85 to 54. The Senate bill passed the House on April 15 by a vote of 85 to 55, with all Republican members and a single Democrat, who refused to sacrifice the personal interests of the veteran congressman from his county on the altar of party solidarity, in opposition.

The apparent readiness of the Democratic majority in the legislature to avoid a compromise and to enact a measure by a strict party vote may be explained, at least in part, by their desire to force upon the Republican governor final responsibility for the acceptance or rejection of a congressional redistricting bill. Their success at the polls in 1930, and the party's prospects for 1932, may have emboldened them to face with confidence a possible election at large of the entire congressional delegation. Whatever their motives, Governor Caulfield made good his threat and returned the bill without his signature on April 25, just one day after it was presented to him. In his veto message, the governor restated his objections to the measure and expressed the hope that the legislature would even yet pass a suitable redistricting bill, but reaffirmed his conviction that it was better that the people of Missouri be inconvenienced for two years or longer than to be deprived indefinitely of fair representation in Congress.

Several weeks in advance of the meeting of the General Assembly, it was intimated publicly that Democratic leaders were contemplating an attempt to pass a congressional redistricting measure by concurrent

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resolution, thus avoiding the necessity of securing the governor's approval. In view of conflicting legal opinions on this point, and the fact that previous redistricting measures in 1882, 1892, 1901, and 1921 had been signed by the governor, it was deemed inadvisable, apparently, to attempt such a procedure. The impossibility of passing the redistricting bill over the executive veto, however, led to further suggestions that this be done, and a resolution was introduced in the Senate immediately after the veto message had been received which declared that the districts included in the bill which passed both houses of the General Assembly were the lawfully established congressional districts in Missouri. The attorney-general rendered an opinion on April 27 holding that the legislature does not have authority to lay out congressional districts without the approval of the governor, and as this opinion was concurred in by a number of prominent Democratic legislators, the resolution was abandoned.[15]

[15] *St. Louis Globe-Democrat,* April 28, 1931. The Missouri constitution makes no express provision for the formation of congressional districts. Art. V, sec. 14, requires that "every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this constitution, shall be presented to the governor and before the same shall take effect shall be proceeded upon in the same manner as in the case of a bill." The attorney-general held that to redistrict the state by a concurrent resolution without the approval of the governor would be violative of this section and of Art. IV, sec. 57, which reserves to the people through the initiative and referendum authority to approve or reject any act of the General Assembly. Press notices indicate that similar situations have developed in Minnesota and New York, and that the authority of the legislatures in those states to act in the matter of congressional redistricting will be tested in the courts. In Massachusetts and Pennsylvania, the governors are said to be considering vetoes of redistricting bills. In this connection, it is of interest to note that sections similar to those appearing in earlier reapportionment acts relative to the manner of redistricting by the states were stricken out of the census and reapportionment bill of 1929, upon motion of the chairman of the House census committee. Subsequently, Representative Reed of New York offered an amendment to permit the legislature in each state, subject to the initiative and referendum, to formulate new congressional districts by *concurrent resolution.* He cited authorities, including Hawke v. Smith (253 U. S. 221), to support his view that the term "legislature" as used in Art. I, sec. 4, of the federal constitution was not intended to include the governor. Since the act of 1929 makes no provision for the manner or method of redistricting, and does not repeal such provisions in earlier acts, presumably Sec. 4 of the act of 1911, which authorizes redistricting "in the manner provided by the laws of each state," is still in effect. The latter statute, however, made no provision for redistricting in the

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Neither party in Missouri can view with entire complacency the prospect of a congressional election at large in 1932. Members of Congress, party leaders, press writers, and others have cited numerous undesirable consequences resulting from the failure to pass a redistricting bill, such as the increased cost of both primary and election campaigns to congressional candidates, the possibility of the election of all representatives from the larger cities, the intensification of the prohibition issue (with the "wets" holding a distinct advantage), and the serious disruption to party machinery in the selection of presidential electors, members of the state party committees, and delegates to the national nominating conventions.[16] Though Democratic legislators at a caucus meeting on April 27 decided to "stand pat" on the redistricting bill which the governor vetoed, a number of the Senate and House majority leaders participated in a series of conferences called by Governor Caulfield during the next few days in an effort to reach a compromise. On April 30, the governor announced that he would sign a proposed redistricting bill prepared by a Democratic senator which, it was reported, would give substantial majorities to the Democrats in seven districts and Republican majorities in five, with the other district very evenly divided. It was hoped that the details of this bill could be worked out by House leaders, and that it could be passed by that body while the Senate was engaged in the impeachment trial of the state treasurer. The House recessed on May 2, however, and no attempt appears to have been made by majority leaders to secure action upon the bill, despite efforts of the governor toward that end. The House reconvened on June 2, but recessed from day to day thereafter until the conclusion of the impeachment trial in the Senate on June 12. Formal sine die adjourn-

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event of a decrease in the representation of any state. The act of 1901 authorized redistricting in such cases by state legislatures, though no state suffered a loss in representation by that act. The representation of Maine, New Hampshire, and Vermont was reduced by the act of 1882, and provision was made in that act for redistricting in such cases by the state legislatures. *Congressional Record*, 70 Cong., 2 sess. (1928-29), Vol. 70, pt. 2, p. 1604; 71 Cong., 1 sess. (1929), Vol. 71, pt. 3, pp. 2443-48; 46 *Stat. L.*, 21, 26; *U. S. Code*, Title II, chap. 1, sec. 3; 37 *Stat. L.*, 13, 14; 31 *Stat. L.*, 733, 734; 22 *Stat. L.*, 5, 6.

[16] Some of the difficulties suggested were based upon the doubtful assumption that the failure of the legislature to pass a redistricting act before the congressional elections of 1932 would automatically repeal the state statute creating congressional districts in 1901.

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ment came on June 15, with only the officers and a few members of each house in attendance.[17]

Thus Missouri joins the group of at least half a dozen states in which the avoidance of an election at large for some or all of their representatives in Congress in 1932 is dependent upon the results of court action, popular referenda, or special legislative sessions. The consequences involved in the election at large of such a sizable group of House members suggests a situation unique in the annals of congressional organization. Governor Caulfield announced two days after the final adjournment of the Missouri legislature that he expected to confer with party leaders during the next few weeks, and that if an agreement could be reached upon a redistricting plan, he would call a special session of the General Assembly in the fall before the opening of the 1932 election campaign. It is quite certain that members of Congress from both parties will lend their support to this further effort of the governor to cut the Gordian knot of congressional redistricting.

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[17] The General Assembly failed also to take final action on the equally important question of state senatorial redistricting. A committee bill was reported to the Senate on March 25 which, it was estimated, would give the Democrats 19 and the Republicans 15 of the 34 districts. A difference in population of approximately 34,000 between the proposed districts, while excessive, would be a vast improvement over the existing districts with a difference of 55,000 in 1901 when they were formed and 205,000 in 1930. The bill allotted a total of 15 senatorial districts to the four urban counties—St. Louis, Jackson, Buchanan, and Greene—and to the city of St. Louis. The latter, a Republican stronghold, was given only seven of the eight senators to which her population entitles her. The bill was ordered engrossed on April 10, and was passed by the Senate on April 14 by a vote of 21 to 9, with four Republican senators voting "yes" and two Democratic senators voting "no." Dissatisfaction with the proposed districts among many Democratic members, a reluctance on the part of rural representatives to increase urban strength in the upper house, the pressure of other legislation, and the unusual length of the session combined to prevent action in the House.

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STATE CONSTITUTIONAL LAW IN 1930-31

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A. AMENDMENT OF STATE CONSTITUTIONS

The most significant case in the field of state constitutional law decided during the past year is that of State *ex rel.* Miller v. Hinkle,[1] decided by the supreme court of Washington in 1930. This case held that an apportionment act is a "law," and can be popularly initiated under the initiative and referendum provisions of the constitution of the state of Washington. The court granted a petition for a writ of mandamus to compel the secretary of state to accept a petition submitting to popular referendum a proposal to redistrict the state for purposes of representation in the legislature. The legislature had failed for many years to perform its constitutional duty to reapportion the state, and this case illustrates the most conclusive argument in favor of the use of the initiative and referendum for purposes of ordinary legislation, even though the only legislation to which it be applied be that of reapportionment. Many states are faced with a serious problem in connection with over-representation of rural districts in the legislature and under-representation of urban districts. The initiative and referendum seem to offer about the only way out of the difficulty if state legislatures refuse to correct the inequality. The only alternative is that we change our ideas as to the necessity of majority rule in the selection and composition of legislative bodies, a change which the rural districts appear already to have made.

The Washington decision is especially interesting at the present time because of pending litigation in some of the state courts in connection with congressional reapportionment. Congressional districts are created by state statutes, inasmuch as Congress has provided no legislation covering this subject aside from the general requirement that the districts shall be composed of contiguous territory. The constitution of the United States provides that "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations except as to the places of choosing senators."[2] It seems that Congress could alter state regulations con-

[1] 286 Pac. 839 (Wash. 1930).

[2] United States Constitution, Art. I, sec. 2, cl. 1.

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cerning districting and elections so far as they relate to the selection of members of Congress, and that such alterations, if made, must be made by "law." The provision quoted does not state clearly whether regulations made by the states shall be made by "law," the phrase used—"by the legislature thereof"—being somewhat ambiguous. It is very likely that this phrase would be interpreted to mean by "law." It is a matter of some consequence in the states whether this phrase would be so construed, because if apportionment acts are "laws" they must be submitted to the chief executive of the state for approval or veto; while if the words of the constitutional provision are to be taken in their literal meaning, such acts need not be submitted to the governor. There is good reason for believing that the strict interpretation of the word "legislature" followed in connection with Article V of the federal Constitution will not be followed in connection with the creation of districts, as the Supreme Court of the United States has already held that the word "legislature," as used in Article V, excludes a popular referendum,[3] while the same court has held that the same word as used in Article 1, section 2, clause 1, does not necessarily exclude such a referendum.[4] This indicates that the same word is used in different senses in these two sections of the Constitution.

A few states have sought to obviate the obstacle standing in the way of exclusive legislative control over this subject by formulating their apportionment acts in terms of joint resolutions, instead of as statutes; but inasmuch as most of the state constitutions place such resolutions on the same plane as statutes for purposes of the veto power, such attempts are likely to prove fruitless.

An interesting and significant advisory opinion on amendments is an opinion of the justices of the supreme court of Alabama, which is to the effect that amendments may be proposed by the legislature in special session, even though the session be held during the period of adjournment of the regular session, and the election at which the amendment is to be voted on is to be within three months after the special session.[5] The requirement in the Oklahoma constitution that amendments must be proposed by a two-thirds vote of "each house" was held to mean two-thirds of those "elected and constituting" each house, not two-thirds of the majority of each house.[6]

[3] Hawke v. Smith, 253 U.S. 221 (1930).

[4] State of Ohio *ex rel.* Davis v. Hildebrant, 241 U.S. 565 (1916).

[5] 132 So. 311 (Ala. 1931).

[6] Looney v. Leeper, 292 Pac. 365 (Okla. 1930).

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B. STRUCTURE AND FUNCTIONS OF GOVERNMENT

1. Separation of Powers. According to a New Mexico case, the doctrine of the separation of powers as set forth in state constitutions does not relate to municipal government, and a mayor can be a district attorney so far as any constitutional doctrine of the separation of powers is concerned.[7] The statutes may provide for separation of powers in local government, but unless they do, such a separation is not required.

A statute was held valid in California which gave the courts the power to fix the compensation of certain officers under the control of the court;[8] and in Moore v. Johnson, legislation permitting a county board to fix the length of term of a school superintendent was upheld.[9] Legislative delegation to the board of public utility commissioners of the power to abandon grade crossings was held valid in New Jersey as not giving to the commission too broad a discretion;[10] and in Oregon a statute authorizing the governor to proclaim open seasons during which fish and game might be taken lawfully was upheld, although the proclamation issued under this authority was declared invalid for indefiniteness because it did not designate the date at which a season should end.[11] Such authority is commonly given to the chief executive, or to the head of the conservation or fish and game department, and has generally been upheld if the proclamations meet the requisite tests of definiteness. In this connection, a statute was held valid in California which gave to a commission power to issue revocable permits to take fish if the commission, in its discretion and after a hearing, found that a species of fish would not be exhausted and that the taking would not result in its waste or deterioration.[12] The court held that this statute provided a sufficient guide to the commission, as the commission must determine the facts referred to by the statute before exercising its discretion, and the statute having indicated what those facts should be, the legislature had sufficiently indicated the grounds upon which the commission should act in granting or refusing permits.

A significant New York case, Handler v. Berry, holds a statute valid which gives to the appellate division of the supreme court of that state

[7] State *ex rel.* Chapman v. Truder, 289 Pac. 594 (N. Mex. 1930).
[8] Millholen v. Riley, 293 Pac. 69 (Cal. 1930).
[9] 32 S.W. (2d) 353 (Ky. App. 1930).
[10] West Jersey & S. R. Co. v. Pub. Util. Commr's., 152 Atl. 378 (N.J. 1930).
[11] State v. Burckhard, 194 Pac. 1103 (Ore. 1931).
[12] People v. Globe Grain & Milling Co., 294 Pac. 3 (Cal. 1930).

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power to investigate the conduct of judges of certain inferior courts, and the power to remove judges of these courts subsequent to such investigation. The supervision and removal of judges of inferior courts was said to be sufficiently related to judicial work to justify the grant of this power to the courts, although the power of investigating the conduct of officers and the power to remove them from office is ordinarily regarded as executive in nature.[13]

A New Hampshire statute authorizing the probate courts of that state to pass upon applications for pensions, and to keep the public informed upon the general operation of the pension law, was held invalid as delegating executive functions to the probate courts.[14]

An administrative body such as the public utility commission cannot exercise the judicial power to punish for contempt or to impose a fine for contempt, because this is a judicial power which can be exercised only by the courts.[15] So, too, an administrative board may not be authorized to make orders divesting owners of condemned land of their title to the property.[16]

An interesting example of judicial liberality toward a delegation of power to an administrative officer is afforded by the decision in State *ex rel.* Macey v. Johnson, decided by the Idaho court in 1931. Here the court upheld a statute permitting an administrative officer to collect from inmates of an insane hospital the "actual charges and expenses" of the patient "for care and safekeeping." The court held that the administrator was limited to the collection of actual charges and expenses, and that these words furnished a sufficient standard by which to test administrative action.[17]

Article 1, section 25, of the Indiana constitution provides that no law shall be passed, the taking effect of which shall be made to depend on any authority other than that provided for in the constitution. Municipalities were authorized by law to create park districts if the voters of the municipality decided that it should be done. In sustaining this law, the court pointed out that the statute indicated the general policy to be followed in laying out park districts, and the adoption of the plan by the voters alone was necessary to make the law take effect.

[13] Handler v. Berry, 247 N.Y. 46 (Sup. Ct. Sp. Term, 1931).

[14] *In re* Opinions of Justices, 154 Atl. 217 (N.H. 1931).

[15] People v. Swena, 296 Pac. 271 (Colo. 1931).

[16] White v. Maverick County Water Control Dist., 35 S.W. (2d) 107 (Tex. Comm. App. 1931).

[17] 296 Pac. 588 (Ida. 1931).

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This case indicates the attitude taken by many courts toward statutes of this kind, the explanation usually offered for this attitude being that the statute embodies the policy, that these constitutional provisions are intended only to prevent the formulation of policy by any authority other than the legislature, and that they do not extend to the legislative indication of a particular event, upon the happening of which the legislative policy shall go into force. A municipal election at which the voters decide to proceed in accordance with the provisions of the statute is regarded only as an "event."[18]

2. The Judiciary. The judiciary is not a "department" within the meaning of that term as used in the California statute creating the department of finance and subjecting state departments to fiscal supervision.[19]

A workmen's compensation statute was held valid although appeals from the board were limited to questions of law so as to make conclusive the awards of the board on questions of fact, and this does not constitute a vesting of the judicial power outside of the courts.[20] A board of governors of a state bar association can be given the power to suspend an attorney for advertising for business if the courts have adopted as their own rules the rules of the governing board, the board acting in such a case as the agency of the court.[21]

Declaratory judgment acts were sustained against the attack of unconstitutionality in Nebraska[22] and Wyoming.[23] The state courts are now apparently uniform in holding such statutes valid as not conferring non-judicial powers on the courts; the Michigan court—the only one previously holding a contrary view—has pronounced valid a second statute providing for a declaratory judgment. The Wyoming court very properly paid Professor Edwin M. Borchard the tribute of referring to his articles on the declaratory judgment, a distinction which has been awarded to relatively few academic writers on legal and governmental subjects, though the practice is steadily becoming more common.[24]

[18] Johnson v. Bd. of Park Commr's., 174 N.E. 91 (Ind. 1930).

[19] See *supra*, note 5.

[20] DeMay v. Liberty Foundry Co., 37 S.W. (2d) 640 (Mo. 1931).

[21] Barton v. State Bar of California, 289 Pac. 818 (Calif. 1930).

[22] Lynn v. Kearney County, 236 N.W. 192 (Neb. 1931).

[23] Holly Sugar Corp. v. Fritzler, 296 Pac. 206 (Wyo. 1931).

[24] The article referred to appears in 28 *Yale Law Jour.*, 1. Professor Borchard's most recent article on this subject appeared in the April, 1931, number of the *Columbia Law Review.*

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Putnam v. Nordblad,[25] an Oregon case, illustrates the refusal of the courts to issue writs of mandamus to high administrative officers in case the duty to be performed by the officer is a discretionary one. Two cases in South Dakota and Missouri involve the validity of statutes conferring on the courts jurisdiction to settle election contests. In the South Dakota case the statute was valid, the jurisdiction having been granted to the supreme court exclusively. The court said that the procedure for settling a contested election was much like a proceeding in *quo warranto,* despite the fact that *quo warranto* may not be instituted until one of the contestants obtains possession of the office, while the procedure for settling an election contest aims to test the right to office before either candidate actually is inducted into office. The South Dakota constitution provides in Article V, section 3, that the legislature may regulate proceedings in *quo warranto,* and under this provision jurisdiction may be vested in the supreme court to settle election contests.[26] In the Missouri case,[27] a constitutional provision authorizing judges to determine contested elections between candidates for office does not cover contests to settle nominations in a primary, and a statute granting a judge in vacation this power is invalid, as "court" does not include a judge in vacation.

The guarantee of the right of trial by jury does not mean that the legislature may give to the jury the power to decide on questions of law, to the exclusion of the judge; and such was the decision in People v. Bruner,[28] an Illinois case.

The provision in the Oklahoma constitution, Article VII, section 14, to the effect that on appeal from a justice of peace court to a county court the trial shall be *de novo* means that an entirely new trial shall be held in the county court, just as though no steps had previously been taken in the trial of the case.[29] In connection with appellate jurisdiction, a Missouri decision holds that the jurisdiction of the supreme court, when a county is a party to the suit, extends only to cases in which the county is a party on the record, it being insufficient that the county be the real party in interest.[30] The Louisiana court of appeal has power to issue writs of prohibition only in aid of its appellate

[25] 293 Pac. 940 (Ore. 1930).
[26] Warren v. Brown, 234 N.W. 38 (S.D. 1930).
[27] State *ex rel.* McDonald v. Lollis, 33 S.W. (2d) 98 (Mo. 1930).
[28] 175 N.E. 400 (Ill. 1931).
[29] Giles v. Shaw, 293 Pac. 1103 (Okla. 1930).
[30] Bowman v. Phelps County, 36 S.W. (2d) 414 (Mo. 1931).

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jurisdiction; and when it has not appellate jurisdiction over a particular case the writ may not be issued.[31] The Indiana appellate court may be given final jurisdiction over certain minor criminal cases, according to a recent Indiana supreme court decision.[32] The pertinent constitutional provisions involved in this case were Article VII, section 4, which gives to the supreme court jurisdiction in appeals "under such regulations and restrictions as may be prescribed by law;" Article I, section 12, providing that "justice shall be administered . . . speedily and without delay." Another decision touching the Indiana appellate court sustained the statute requiring that court to put its opinions in writing.[33] The supreme court, according to constitutional mandate, must do this; and that court did not feel that, in view of this provision, a statutory requirement to the same effect could be held unreasonable when applied to the appellate court.

The constitution of Mississippi, in section 260, provides: "Nor shall the boundary of any judicial districts in a county be changed, unless at an election held for that purpose, two-thirds of those voting assent thereto." In Mulliner v. Bouldin,[34] Division A of the supreme court of that state decided that this provision does not apply to an election to *abolish* districts. The provision applies only when district lines are to be relocated. The county judge in Kentucky may receive additional compensation for presiding at misdemeanor trials, but the aggregate of all his official income must not exceed the five-thousand-dollar figure mentioned in the state constitution.[35]

Several cases were decided during the past year dealing with the effect of an unconstitutional statute, and one series deals with the validity of amendatory or curative acts which attempt to remedy a situation arising out of a prior decision that a statute is invalid. The courts are not agreed as to the rule which should be followed in these cases.[36] A very interesting statement is to be found in State *ex rel.* Clithers v. Showalter, a Washington decision of 1930, which illustrates the mechanical view which some courts take toward decisions affecting the constitutionality of statutes.[37]

[31] State *ex rel.* Griffin v. Morgan, 130 So. 868 (La. 1930).

[32] *In re* Petition to Transfers, 174 N.E. 812 (Ind. 1931).

[33] Hunter v. Cleveland, C. C. & St. L. Ry., 174 N.E. 287 (Ind. 1930).

[34] 131 So. 364 (Miss. 1930).

[35] Robinson v. Elliott, 32 S.W. (2d) 554 (Ky. App. 1930).

[36] Smith v. State Bd. of Medical Examiners, 157 S.E. 268 (Ga. 1931); Clay v. Buchanan, 36 S.W. (2d) 91 (Tenn. 1931).

[37] 293 Pac. 1000 (Wash. 1930): ". . . a court should not allow the facts of the particular case to influence its decision on a question of constitutional law,

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The statement is usually made in judicial decisions and commentaries on them that a statute will not be declared invalid unless it violates some specific provision in the state or federal constitution. The following is a quotation from People *ex rel.* Broomell v. Board of Election Commissioners,[38], an Illinois case decided in 1931: "This court has held that, where an amendment to an election law is inconsistent with and repugnant to existing conditions of the law so as to render the amendment inoperative and dangerous, this court will declare the amendment void, and by mandamus order the proper officer to disregard it. . . . The physical impossibility of conducting the election under the amendment of 1929 renders this case a proper one for the writ of mandamus, and the same is awarded." An Iowa case also decided that a statute was invalid because unworkable in fact.[39]

In Miller v. Lamar Life Insurance Co.,[40] the Mississippi court permitted the state tax collector to challenge the validity of a state tax law because the parties interested, who should normally have challenged the validity of the law, could not easily obtain a determination of the issue. The general rule seems to be that a person not adversely affected by an invalid statute may not challenge its validity, but there are some exceptions to this rule, the Miller case illustrating one of them.

Contempt. Few contempt cases during the year presented new questions, but *In re* Glauberman,[41] decided by the New Jersey court of appeals, presented an interesting group of facts. In that case, a trial court had so aroused some of counsel that they inserted such strictures on that court in their briefs which were presented to the appellate court that the latter court ordered the attorney suspended for printing the derogatory remarks, and reprimanded other counsel for permitting their names to be used on the brief without having read it.

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nor should a statute be construed as constitutional in some cases and unconstitutional in others involving like circumstances and conditions. Furthermore, constitutions do not change with the varying tides of public opinion and desire. The will of the people therein recorded is the same inflexible law until changed by their own deliberative action; and therefore the courts should never allow a change in public sentiment to influence them in giving a construction to a written constitution not warranted by the intention of its founders." The court cites 6 R.C.L. 46; State *ex rel* Banker v. Clausen, 142 Wash. 450, 253 Pac. 805 (1928). See also Harrison v. Nat. Biscuit Co., 157 S.E. 666 (Ga. 1931).

[38] 174 N.E. 841 (Ill. 1931).

[39] Davidson Bldg. Co. v. Mulock, 235 N.W. 45 (Ia. 1931).

[40] 131 So. 282 (Miss. 1930).

[41] 152 Atl. 650 (N. J. App. 1930).

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3. The Legislature. Another Illinois decision to be added to the list in that state dealing with the reapportionment problem is that of People *ex rel.* Fergus v. Blackwell, in which the court refused to permit *quo warranto* to be used to test the validity of a member's right to serve from one of the existing districts. The court reiterated its conviction that the legislature could not directly or indirectly be compelled by court action to reapportion.[42]

In Alabama, an opinion of the justices delivered to the senate expressed the view that any reapportionment in that state must be made so as not to increase the number of senators above thirty-five unless new counties were created, as the senate may not have more than one-third the number of members of the house, and the house has a membership of 106.[43] The Arkansas constitution, in Article IV, section 6, provides that the governor shall call special elections to fill vacancies in legislative seats; and in section 11, that each house is to be the sole judge of the elections, qualifications, and returns of members. In Article XVI, section 13, provision is made authorizing any citizen to sue to protect himself and others from the enforcement of any illegal exaction. In Davis v. Wilson, [44] plaintiff sued to restrain the auditor from issuing a warrant to pay a salary to a senator who had been appointed by the governor to fill a vacancy. The injunction was denied on the grounds that it was not the proper remedy whereby to try title to office, and that the senate was the final judge of the election and qualifications of this senator.

An interesting opinion rendered by the judges of the Alabama supreme court to the legislature involved the following set of facts. The Alabama constitution contains no time limit on the length of regular sessions. The legislature adjourned during one of its regular sessions for a longer period of time than that fixed for special sessions. The governor called a special session to meet during the period for which the regular session had been adjourned, and this special session proposed an amendment to the state constitution. The opinion held that a special session could be called under these circumstances, and that constitutional amendments could be proposed during such a session.[45]

Can legislative intent in the enactment of a law be proved in a trial by the testimony of members of the legislature? The Arizona court

[42] 173 N.E. 750 (Ill. 1930).
[43] *In re* Apportionment, 132 So. 457 (Ala. 1931).
[44] Davis v. Wilson, 35 S.W. (2d) 1020 (Ark. 1931).
[45] *In re* Opinions of Justices, 132 So. 311 (Ala. 1931).

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held in Barlow v. Jones that such testimony is inadmissible.[46] An interesting special legislation case in Georgia declared a statute to be special because it classified counties solely on the basis of population for purposes of school assessments.[47] Courts in many states have gone a long way in sustaining legislation of this kind, but the Georgia court refused to permit this classification because of its belief that there was no necessary connection between population and the purpose for which the statute was enacted.

In South Dakota, a statute providing for the establishment of a new rural credit board was held not to be an emergency measure, and a legislative declaration that it was such a measure was held to be ineffective to keep the statute from being submitted to popular vote in a referendum.[48] The law did not come within any of the categories mentioned in the constitution, these including laws dealing with (1) peace, (2) health, (3) safety, and (4) support of state government or institutions.

State constitutional provisions regulating legislative procedure do not apply to the work of city councils in the enactment of municipal ordinances.[49]

4. The Administrative Branch. *Governor.* In Indiana, bills may not be presented to the governor during the last two days preceding adjournment; and an Indiana case holds that the governor need take no action on bills presented to him during that period, and that the usual veto provisions have no affect in this situation.[50]

The governor's power of removal was involved in two interesting cases during the past year. In Missouri, a statute was declared invalid which gave to the governor power to suspend the state treasurer. The treasurer is a constitutional officer in Missouri and is subject to impeachment. The constitution also fixes the tenure of his office. The Missouri supreme court held, in State *ex rel.* Shartel v. Brunk,[51] that the state constitutional provision giving to the legislature power to provide for the removal of officers except as otherwise provided for in the constitution did not sustain the statute, since in the case of the state treasurer provision for his removal had been made in the constitution.

[46] Barlow v. Jones, 294 Pac. 1106 (Ariz. 1930).
[47] So. Ry Co. v. Harrison, 157 S.E. 462 (Ga. 1931).
[48] *In re* Opinion of Judges, 234 N.W. 671 (S.D. 1931).
[49] Shepherd v. City of Little Rock, 35 S.W. (2d) 361 (Ark. 1931).
[50] State *ex rel.* Owen v. Fortieth Judicial Circuit, 174 N.E. 423 (Ind. 1931).
[51] 34 S.W. (2d) 94 (Mo. 1930).

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The Virginia court held invalid a statute authorizing the removal of persons engaged in collecting revenue, the statute not providing for notice or hearing. Appeal to the legislature was provided for by the statute, but appeals could not be taken to the courts. The court held that the statute conferred judicial power on the governor. The constitution of the state gives a similar power of suspension with respect to certain officers, but the court held that suspension cannot be authorized by statute without making provision for notice and hearing. Two concurring opinions were written, and three dissenting opinions, and the whole case is an interesting one to read, although much bad doctrine is to be found in a number of opinions.[52]

Lieutenant-Governor. The Oklahoma constitution, in Article V, section 23, prohibits members of the legislature from being elected to an office created during the term for which they have been elected, or the compensation of which has been increased during the term. A member of the Oklahoma senate who was a member of the legislature during a session when the governor's salary was raised subsequently became a candidate for lieutenant-governor. His term did not expire until after the date of election, but the supreme court of the state held that in view of Article VI, section 5, of the state constitution, which states that the legislature shall meet and declare which of the candidates received the highest number of votes, the candidate was not elected until the legislature had met and made the declaration of election, and that, therefore, the present candidate could properly have his name put on the primary election ballot, the action in this case having been for an injunction to strike the name of the candidate from such a ballot.[53] The court emphasized its opinion that a person is not elected to office until all the steps mentioned in the constitution relative to the election process have been complied with.

In Rouse v. Johnson, the Kentucky court of appeals held that the lieutenant-governor is primarily an executive officer, at least sufficiently executive to sustain a statute constituting the governor, the lieutenant-governor, and attorney-general a board of appointment, whose duties included the appointment of members of the state highway commission.[54] The opinion also discusses the power of the governor in Kentucky to fill vacancies, a subject which is in considerable confusion in that state.

Pardon. Another chapter in the Ferguson saga, with the scene laid

[52] 157 S.E. 736 (Va. App. 1931).
[53] Gragg v. Dudley, 289 Pac. 254 (Okla. 1930).
[54] 28 S.W. (2d) 745 (Ky. App. 1930). See note, 30 *Col. L. Rev.* 1199.

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in Texas, closed when a legislative pardon was declared ineffective to remove the effects of an impeachment judgment.[55] A Mississippi case holds that a pardon absolves an attorney convicted of crime from all the consequences of his crime, so that even though a disbarment order had been entered at the time of entry of judgment against the attorney for the crime, he might nevertheless again enter the practice of law.[56] State v. Lee, decided by the Louisiana court this year, presented a novel series of facts. The defendant had been convicted and sentenced to a two-year term. He was subsequently pardoned for the offense involved. Later on, he was prosecuted for a second offense; and the question arose whether this was a second offense or a first offense so far as cumulative penalties were concerned. The court held that the pardon had the effect of completely wiping out all legal consequences of the first offense, and that the defendant was now a first offender.[57] The courts of the states are not agreed on this point, some taking a contrary view. Under this decision, the governor can, by his use of the power of pardon, render practically useless statutes providing for heavier penalties for second and third and fourth offenders.

Administration. No cases of outstanding significance in the general field of administration, comparable to some of the administrative reorganization cases decided during the past few years, came up during the past year. The Kentucky constitution provides, in section 161, that "the compensation of any . . . county . . . officer shall not be changed after his election or appointment, or during his term of office . . ." Section 235 provides that "the salaries of public officers shall not be changed during the terms for which they were elected. . . ." In Bright v. Russell,[58] these provisions were held to forbid giving the sheriff fees for issuing dog licenses, a prior law having assigned this duty to clerks of the county. The court suggested that if the work were done outside of the county, or if the duties were not imposed upon the sheriff as sheriff, a different result might have been reached. The five-thousand-dollar limit on officers' salaries in Kentucky does not prohibit two officers, each holding for part of the year, from receiving an aggregate of over five thousand dollars, the constitutional provision being limited to the case where one officer gets more than that sum.[59] An interesting case from the standpoint of the relation of the state to education, turn-

[55] Ferguson v. Wilcox, 28 S.W. (2d) 526 (Tex. 1930).
[56] *Ex parte* Crisler, 132 So. 103 (Miss. 1931).
[57] 132 So. 219 (La. 1931).
[58] 33 S.W. (2d) 643 (Ky. App. 1930).
[59] Whittenberg v. City of Louisville, 36 S.W. (2d) 853 (Ky. App. 1931).

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ing on statutory as much as constitutional provisions, held that the regents in South Dakota could not make a teachers college out of a normal school, the latter having as its primary purpose the training of elementary teachers, not the training of high school teachers.[60]

5. Finance and Taxation. Article IX, section 8, of the Minnesota constitution provides: "The money arising from any loan made, or debt or liability contracted, shall be applied to the objects specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever." Section 5 of the same article states that every state debt secured by bonds "shall be authorized by law, for some single object, to be distinctly specified therein." Chapter 265 of the Laws of 1929 authorized payments from the rural credits reserve fund to school districts to reimburse them for the loss of taxes due to the foreclosure of lands located in the district under the rural credits act, the land being taken over by the state as a result of the foreclosure. The statute was held invalid, the law not being confined to general revenue, and the court holding that the reserve fund could not be treated as general revenue. This rule was held to apply whether the money was re-loaned or whether the money used was obtained from interest on loans.[61] Such a decision as this, while perhaps technically supportable, makes more difficult the problem faced in a number of states of reaching a cure for the effect of the present economic depression upon rural school districts in some parts of the Northwest.

The Montana court decided that the word "liability," as used in Article XIII, section 2, of the constitution of that state, providing for submission to popular vote of statutes authorizing the creation of any liability against the state, should be construed broadly, and held that the state highway treasury anticipation act must be submitted to the electors. This act provided for the sale of debentures, to be retired out of the receipts from the motor fuel tax, to be deposited in the highway fund.[62]

Article XI, section 18, of the California constitution, prohibiting state indebtedness in excess of income, does not apply to the indebtedness of joint highway districts formed by two or more counties.[63] In

[60] State *ex rel.* Prchal v. Dailey, 234 N.W. 45 (S.D. 1931).

[61] State *ex rel.* Common School Dist. v. Sageng, 235 N.W. 280 (Minn. 1931).

[62] State *ex rel.* Diedrichs v. State Highway Comm., 296 Pac. 1033 (Mont. 1931).

[63] Sharp v. Jt. Highway Dist. No. 6, 295 Pac. 841 (Cal. D.C. App. 1931).

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Ward v. City of Chicago,[64] the Illinois constitutional debt limit provision limiting cities does not prohibit the issuance of certificates of indebtedness to pay for water improvements, the improvements to be paid for out of water works earnings and to be set aside in a separate fund. The difficulties in which some cities are finding themselves, due to over-expansion during the boom times, is illustrated in a Florida case. A number of cities are experiencing considerable difficulty in meeting instalments due on certain bond issues, but the Florida court enforced payment of taxes so as to protect the bond-holders under the contract clause of the federal Constitution, even though the taxes were practically confiscatory in some instances.[65] Other evidences of dissatisfaction on the part of taxpayers with high taxes are to be found in cases, arising more and more frequently, in which the claim is made that the tax is confiscatory; but the courts continue to hold that they cannot declare a tax invalid merely because it is higher than they think it ought to be.[66]

Governmental encouragement to construction projects sometimes takes the form of exempting buildings under construction, and a New York charter provision providing for such exemption was held valid against the attack that such an exemption constituted a loan of credit by the city to the owner of the building.[67] Exemption cases sometimes turn on the question whether the business in which the person is engaged, or the use to which the property is devoted, comes within the strict terms of the exemption clauses of constitutions or statutes. A Texas case decides that a house used as a residence for the business manager of a private school was not exempt from taxation, as the building was not used "purely" for educational purposes.[68] The business manager in this case did not use the building as an office, and he received as part of his salary the privilege of living in the house during the term of his employment. An appropriation made to a maternity home governed by a self-perpetuating board, all the members of which were of the same religious denomination, was held invalid in Collins v. Martin.[69] Most of the workers in the maternity home were also of the same religious faith as the members of the board of gov-

[64] Ward v. City of Chicago, 173 N.E. 810 (Ill. 1930).
[65] State *ex rel.* Don Animos v. Lehman, 131 So. 533 (Fla. 1930).
[66] Nashville, C. & St. L. Ry. v. Carroll County, 33 S.W. (2d) 69 (Tenn. 1930).
[67] People *ex rel.* Fifth Avenue Corp. v. Goldfogle, 173 N.E. 685 (N.Y. 1930).
[68] State v. Waggoner, 35 S.W. (2d) 389 (Tenn. 1931).
[69] 153 Pa. 130 (Pa. 1931).

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ernors. A statute providing for the reimbursement of treasurers of school districts for money paid out by them to make good losses in school funds due to bank insolvencies was held valid in Minnesota. The proposal to reimburse must, under the statute, be submitted to a vote of the people in the school district.[70]

Cases involving claims to recover illegally exacted taxes are arising with increasing frequency, and numerous constitutional and statutory questions are often involved. One of the problems presented in many of them, when the taxes are exacted by the state instead of by local communities, is that of suit against the state. A few states are unable to render themselves subject to suit except by constitutional amendment, but most of them can solve this problem by statute. California has for many years had a statute authorizing suit against the state in case of contract or tort; but very few claims have been presented under it, and the scope of the statute was not well understood. In a recent decision by the district court of appeals, this statute was held to authorize suit against the state to recover taxes paid under protest under an invalid statute, but to exclude claims against officers for the recovery of such taxes.[71] The case is a very significant one, and there are indications that this statute will soon be put to the use for which it was originally intended, that is, to provide a comprehensive remedial system against state injuries to individuals.

6. Local Government. A city under a home-rule charter in Ohio has the power which the legislature would have had, and it may appropriate money to reward an act of heroism, since the legislature would have had the same power. The case involved a construction of Article XVIII, section 3, of the Ohio constitution governing home-rule charters and the powers of cities under them; and this article was held to be self-executing, so that no amendment to the charter was necessary to confer upon the city any specific power.[72]

One of the troublesome questions in connection with home-rule policy is the question of what functions are state functions and what ones are local. The problem is not limited to those states having home rule for cities; but it often arises there because of the formal recognition given

[70] State *ex rel.* Moser v. Kaml, 233 N.W. 802 (Minn. 1930).

[71] Cal. Securities Co. v. State, 295 Pac. 583 (Cal. D.C. App. 1931). The author has prepared a separate study on this subject, to appear in the *Harvard Law Review* for next autumn.

[72] State v. Rusk, 174 N.E. 142 (Ohio 1930).

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to local governments, involving, as it usually does, the problem of more precise definition of local versus state functions. In Nebraska, Omaha was permitted to establish a municipal university, although education was said to be a state function. The court held valid a statute authorizing home-rule cities to establish municipal universities, on the ground that the city acts as a political subdivision of the state, in this case in performing the educational function.[73]

Article XII, section 6, of the New York constitution, provides that all elections for city officers shall be held in odd-numbered years. This was construed to forbid voting on municipal questions at general state elections, the particular question in the case being a referendum vote on whether an ordinance should go into effect which closed theaters on Sunday in a certain city.[74]

C. RELATION OF GOVERNMENT TO THE INDIVIDUAL

1. Suffrage and Elections. A Tennessee case holds that the legislature may deprive a non-resident property-owner of the right to vote in municipal bond elections.[75] The Georgia constitution requires the payment of taxes six months before an election at which a person offers to vote. One of the qualifications for office is that a person be a voter. The defendant in a *quo warranto* proceeding ran for an office in a special election in April, and the next general election occurred in the following November. He had qualified as a voter for the general election in November, but had not complied with the tax-paying requirement as to the six months' period preceding the April special election. The court held that a candidate must be qualified at the time of election, and that the constitutional provision referred to applied to general elections, although it did not specifically say so, and if the defendant was qualified to vote at the general election in November and was qualified in April, he could vote at the April election, and could, therefore, be a candidate at that election.[76]

2. Freedom of Speech and Press. An ordinance enacted by the city of Milwaukee provided that "it is hereby made unlawful for any person . . . to circulate or distribute any circulars, handbills, cards, posters, dodgers, or other printed or advertising matter . . . in or upon

[73] Carlberg v. Metcalf, 234 N.W. 87 (Neb. 1931).
[74] Reycroft v. City of Binghamton, 245 N.Y.S. 375 (N.Y. Sup. Ct. 1930).
[75] Clay v. Buchanan, 36 S.W. (2d) 91 (Tenn. 1931).
[76] McGill v. Simmons, 157 S.E. 273 (Ga. 1931).

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any sidewalk, street, alley, etc.'' This ordinance was sustained against the attack that it violated the constitutional right of free speech. The measure was sustained on the ground of police protection, as a guard against clogging sewers, littering up streets, and increasing fire hazards. The court construed the ordinance so as not to prohibit the act of handing out bills on account of their contents, but only on account of their form. Newspapers were said not to be included in the ordinance, and the court distinguished between the likelihood that newspapers would not be so readily thrown into the gutters and streets and the likelihood that handbills would be so treated. The bills circulated in this particular case were tracts promulgating certain economic views, and the conviction was sustained.[77]

3. Freedom of Religion. A Washington decision construes the anti-Bible reading constitutional provision as applied to the public schools of that state, but nothing new is contained in the opinion.[78] The Kansas statute forbidding the sale of goods, wares, and merchandise on Sunday was upheld in State v. Haining,[79] and the statute was applied to a sale of the right to enter a theater, no tickets having changed hands in the transaction.

4. Imprisonment for Debt. People *ex rel.* Sarlay v. Pope,[80] a decision by the appellate division of the New York supreme court, decides that if a party refuses to tender payment upon the presentation of a deed, it could be enforced by a decree of specific performance, and proceedings in contempt may be used to enforce the judgment, if no execution is available, despite the fact that imprisonment for debt has been abolished by statute in New York.

5. Protection to Persons Accused of Crime. *Bail.* Article I, section 11, of the Texas constitution, provides that bail shall be given except in capital offenses when the proof is evident. Under this provision, the court holds that the burden is on the state to show that the accused is not entitled to bail, and that the evidence must be ''clear and strong,'' although the trial judge is permitted a wide discretion in deciding whether bail should or should not be granted. In *Ex parte* Reis, the trial judge had made a mistake, permitting the prisoner to give bail on the advice of the prosecuting attorney that the prisoner was bailable, when, as a matter of law, he should not have been permitted to

[77] City of Milwaukee v. Kassen, 234 N.W. 352 (Wis. 1931).

[78] State *ex rel.* Clithero v. Showalter, 293 Pac. 1000 (Wash. 1930).

[79] 293 Pac. 952 (Kan. 1930).

[80] People *ex rel.* Sarlay v. Pope, 246 N.Y.S. 414 (N.Y. Sup. App. Div. 1930).

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give bail. The appellate court held that the trial court could change its decree during the term of court at which the bail had been given, and commit the person to jail.[81]

Jury Trial. Jury trial does not usually characterize proceedings in equity, and the Pennsylvania court decided that no jury trial need be given in an equitable action to settle an account.[82]

In State v. Smith, the Ohio supreme court upheld a statute giving to the accused the right to waive a jury trial, thus following a commendable lead of the United States Supreme Court.[83] Such statutes are coming to be upheld with increasing frequency on the ground that the right to jury trial is a personal right and may be waived,[84] instead of being based on public policy, depending upon considerations other than that of protecting the individual, the latter view being expressed by those courts who refuse to permit waiver of jury trials.

Another case in an important series decided by the Louisiana supreme court during the last few years, involving certain statutes recently enacted in that state in an attempted reform of the criminal law situation there, is State v. Jacques.[85] The court held invalid a statute which permitted one indictment for several crimes arising out of a single act or series of acts, different degrees of crimes triable by different juries under the previous system being involved. The court also held invalid a statutory provision permitting each crime to be tried as a count, all counts triable in one trial under a twelve-man jury, if the crimes were punishable as felonies, the court holding that the requirement of a unanimous verdict of a jury of twelve men could not be required, because the constitution stipulates that only nine men of the twelve need agree.

Cruel and Unusual Punishment. Many state constitutions contain provisions prohibiting the infliction of cruel and unusual punishments in criminal cases. In People v. Baum,[86] the trial court sentenced the accused to a five-year probation period, conditioned on his departure from the state within thirty days. A statute empowered trial courts to

[81] 33 S.W. (2d) 435 (Tex. Crim. App. 1931).

[82] Schwab v. Miller, 153 Atl. 731 (Pa. 1931).

[83] 174 N.E. 768 (Ohio 1931).

[84] People *ex rel.* Swanson v. Fisher, 340 Ill. 250, 132 N.E. 722 (1930), also permits waiver in felony cases.

[85] 132 So. 657 (La. 1931).

[86] 231 N.W. 95 (Mich. 1930).

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impose such conditions as the case warranted. On appeal, this condition was held to constitute a cruel and unusual punishment. This type of punishment is not so often imposed by courts, but is sometimes imposed indirectly in pardons to the accused. In one sense, the punishment is "unusual," and it might be deemed "cruel" by some observers; but these terms have usually been confined in their meaning to "physically cruel and unusual" punishments, and the instant decision has been criticized for departing from this construction.[87]

Ex Post Facto Laws. According to a California case, a statute denying to habitual criminals the right to parole is not an ex post facto law.[88] An interesting case in this connection, although not turning technically on ex post facto rules, is that of State v. Johnsey,[89] in Oklahoma. The defendant in this case had escaped from prison. A statute provided that the sentence for this crime should not be for more than double the length of prison term for which the accused had originally been sentenced. This statute was declared unconstitutional, on the ground that it denied the equal protection of the law to the accused. Convicts who escape cannot be put in a separate class for this purpose.

6. Searches and Seizures. A statute requiring junk dealers to keep books and to make an entry of the name of each person from whom metal scraps are purchased, the books to be open to the inspection of police and of persons losing such metal scraps, was upheld in State v. Segora, by the Tennessee court.[90]

Prohibition cases continue to furnish novel sets of facts to which to apply the various rules governing searches and seizures. In Miller v. Commonwealth,[91] the Kentucky court of appeals had before it the following set of facts. Prohibition officers came to a farm, asked the farmer for a drink, and as he was procuring the water for them they looked through a hole in the smokehouse, saw a tub which they thought was filled with mash, opened the door, went into the smokehouse, found that the tub was filled with mash, and then went to the house some yards distant, opened the door of the house (which was not locked), and searched the place, finding some liquor in the house. The officers knew that the owner of the farm was in the barn at the time; if they did not know he was there they could easily have found out that such

[87] See note, 30 *Col. L. Rev.* 1058.
[88] People v. Vaile, 296 Pac. 901 (Cal. D.C. App. 1931).
[89] 287 Pac. 729 (Okla. 1930).
[90] 34 S.W. (2d) 1056 (Tenn. 1931).
[91] 32 S.W. (2d) 416 (Ky. App. 1930).

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was the case. The court held that the liquor seized in the house was not admissible as evidence. The officers were on the farm lawfully, but of their own volition, and under the circumstances they could not search the house without a warrant, inasmuch as no crime was being committed in the house. The search of the house was not incident to a search of the smokehouse. In Robie v. State, a search warrant authorized the search of the "residence, outhouses, garage, and cellar" of a named owner at a specified location. No search was made of any of these places, but the officers searched an old unused building about three hundred yards from the house and found there the remains of a still. The court held that evidence was properly admitted which had been obtained by a search of this building. The court agreed with counsel that officers may search only the places mentioned in a warrant when they are acting under a warrant, but pointed out that no warrant was needed to search an old abandoned house which gave no evidence of being inhabited and looked very dilapidated, as the house was not with the curtilage and was not used or connected with the other buildings on the premises.[92]

Officers went into a hotel, talked with the room clerk at the registration desk, and, with the clerk's consent, went upstairs to a room and rapped on the door. They waited for four or five minutes, when the defendant came to the door, opened it, stepped back, saying nothing, while the officers entered and arrested him for the commission of a sexual crime. At the trial the defendant objected to the introduction of evidence obtained in the room. The court held the evidence admissible on the ground that the officers should be considered to have been "invited to enter," and on the ground that appellant waived his rights, if any, by consenting to the search. This illustrates to what lengths some courts go in applying the consent theory in order to render admissible evidence pertinent in the trial of a criminal case.[93]

State v. Steeley,[94] a Missouri case, reiterates the general rule that evidence obtained by a private party is admissible, even though if obtained by an officer it would be inadmissible, because obtained contrary to the unreasonable searches and seizures provisions of the state constitution. In this case, no collusion between the officer and the private individual was shown. If such collusion had been shown, a different rule would have been applied.

[92] Robie v. State, 36 S.W. (2d) 175 (Tex. Crim. App. 1931).
[93] Warner v. State, 173 N.E. 599 (Ind. App. 1930).
[94] 33 S.W. (2d) 938 (Mo. 1930).

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7. Suits Against States. A number of cases involved the question whether state courts have jurisdiction over suits against state officers or state agencies. The entrance of state governments into the field of highway construction on such a large scale has given rise to a large number of these cases. The general rule is usually enunciated in cases against officers or agencies of the state that the suit will not lie if it is against the agency or officer acting directly for the state government. Statutes granting jurisdiction over such suits are construed strictly in the majority of cases, although a commendable tendency is discernible in some of the more recent decisions toward relaxing this attitude, thus bringing the cases more into harmony with the general principle that remedial legislation should be construed liberally to effectuate its purpose.

One of the problems arising in connection with suits against states is this: Who may express the state's consent to be sued, on behalf of the state? May state consent be evidenced in any other manner than by statute? May, for example, the attorney-general give such consent by appearing and waiving the defense of immunity, arguing the case on the merits rather than on the point of jurisdiction? Eidenmiller v. State[95] holds that statute alone evidences such consent, the attorney-general being without authority to waive the immunity.

[95] 233 N.W. 447 (Neb. 1930).

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NOTES ON MUNICIPAL AFFAIRS

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The year which has passed since the preparation of the last "Notes on Municipal Affairs" (June 1, 1930) has been even more eventful than the preceding period.

Developments in Particular Cities. *New York City.* The belief which had been growing for many years that the Tammany tiger was, after all, a self-restrained, self-muzzled beast has suffered a rude shock in the exposures of flagrant corruption in the sale of judicial office, the handling of vice, the purchase of land for school purposes, and in many other directions. The district attorney's office has been exposed to the searchlight of investigator Seabury. Charges were preferred against Mayor Walker by John Haynes Holmes and Rabbi Wise in the name of a citizens' committee. Governor Roosevelt dismissed these charges with scant consideration. In the meantime, however, the legislature ordered a most searching investigation of the whole governmental situation in New York—an investigation which bids fair to rival, in extent and dramatic interest, that of the celebrated Lexow committee.

Chicago. In Chicago, Mayor Thompson's political career has suffered, if not extinction, at least a total eclipse. Though victorious against a broken field in the Republican primary, he was defeated by Anton J. Cermak in the election of April 7 by a vote of 476,932 to 671,189. It is probable that the people of Chicago were more anti-Thompson than pro-Cermak, but the new mayor is a vigorous and striking figure. For one thing, he is boss in his own right of the Democratic organization in Cook county. It was one of the theories of Lincoln Steffens, the arch-muckraker, that the way to get good government in an American city is to entrust the management of its affairs to a converted boss. No one else, he felt, had the requisite knowledge of the game to be able to defeat the forces of corruption. Professor Charles E. Merriam, of the University of Chicago, who contributed materially to the election of Mayor Cermak, is confident that he intends to give Chicago an administration as nearly as possible the antithesis of Thompsonism. A good start is scarcely a sufficient basis upon which to predict the ultimate character of a Chicago administration. But, to quote Carroll Wooddy,[1] "Mayor Cermak's early appointments

[1] "Jubilee in Chicago," *National Municipal Review*, XX, 321-325 (June, 1931).

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fell to men of high caliber, his inaugural address announced a program embodying many of the advanced principles of scientific administration. An advisory committee composed of representative citizens and experts in administration was named to coöperate in bringing about consolidation of departments, standardization of contracts and supplies, improved central purchasing, complete reclassification of the civil service, together with the installation of other devices of advanced personnel management, independent auditing of municipal accounts, continuous supervision of appropriations and expenditures, regular reporting—with still more that may not be included." This is undoubtedly a good start.

The financial crisis which in the early days of 1930 bade fair completely to tie up the government, not only of Chicago but of various other local-government units in the Chicago area, has been weathered, at least for the time being. Most municipal governments in these hard times have considerable deficits, but the Chicago situation was made truly desperate by the extraordinary delay in carrying out a reassessment of property. On the first of January, 1930, the tax rolls for neither 1928 nor 1929 were yet available. In the meantime, the city and the other units of government had been financing themselves by borrowing in anticipation of revenue. They had, however, based their estimates of revenue on a normal increase in assessed valuations, whereas the reassessment considerably reduced the assessed valuation of property, especially in the Loop. The loans, therefore, were considerably in excess of any probable tax receipts for the years in question. When the banks refused to lend any more money, the city and its associated units were unable to meet the salaries of their employees. A citizens' committee headed by Silas H. Strawn succeeded in financing the period to July 1, 1930, by subscription. In the meantime, a special session of the legislature called by Governor Emmerson authorized the issuance of bonds to cover the deficit and passed a number of other bills to make the recurrence of such a situation less likely in the future.

Detroit. Detroit, on July 22, 1930, voted by a majority of 30,956 to recall Mayor Charles Bowles. Under the peculiar provisions of the Michigan election laws as they then stood, Mayor Bowles was continued in office until after a second election on September 9, at which he was automatically a candidate to succeed himself. The opposition to Bowles found it impossible to get together upon a single candidate, and their division nearly resulted in his reëlection. With the support

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of William Randolph Hearst's *Detroit Times*, Judge Frank Murphy, of the Recorder's Court, succeeded, however, in obtaining a small plurality. The other two Detroit papers, the *Free Press* and the *News*, supported George Engel, who ran third. The campaign was characterized by extraordinary virulence, and was climaxed by the murder of a radio announcer who had taken a prominent part in the attack on Bowles. It is impossible from the mass of calumnies which accompanied the campaign to draw any definite conclusion as to the merits of the controversy. Bowles was accused of corrupt relations with the underworld, probably with some justice. The Murphy administration has apparently given, on the whole, reasonable satisfaction to the people of Detroit; though as this is written, proof of what amounts to at least colossal carelessness in the administration of the huge unemployment relief funds of the city has been brought to light. To what extent responsibility for this situation will be pinned upon Mayor Murphy is now impossible to say.

The City Manager Plan. The manager plan has continued to grow with moderate speed. In the calendar year 1930, eighteen cities in the United States and two in Ireland adopted it. Of these cities, Dublin, Ireland, Dallas, Texas, and Oakland, California, are prominent enough to deserve special mention. Only one city, Brandon, Manitoba, voted to abandon the plan. The 1930 session of the Kentucky legislature passed a new optional city manager act for second-class cities in place of the act of 1928 declared unconstitutional because of a defect in the procedure of its passage. The 1931 session of the Pennsylvania legislature was the scene of a vigorous battle over two measures: (1) an optional city manager law for Philadelphia, and (2) a similar law for second- and third-class cities. Both of these measures went down to defeat, but the campaign for them was energetically waged. Especially notable was the enthusiastic support of the Pittsburgh newspapers for a manager system for that city. The defeat of this measure was due largely to the attitude of the officials of the third-class cities, who very clearly realized the inroads which the manager plan would make in that group of municipalities, once the optional law was on the books. The Citizens' Charter Committee of Philadelphia put on a spirited and original campaign, but was handicapped by lack of funds and the general apathy of the voters. It may be said, however, that these 1931 proceedings mark a distinct advance toward real municipal reform in Pennsylvania.

Several studies have recently made available interesting information

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on the growth of the manager plan in general. It has often been stated that the manager plan has found favor chiefly in the smaller cities. It is apparent, however, from the analysis of manager cities by population groups which appears in the accompanying table that the proportion of the larger cities which have adopted the manager plan is much heavier than in the case of the smaller cities. It is, indeed, significant that approximately a fifth of all cities in the United States of over 25,000 inhabitants have adopted the manager plan. It is still more significant that eighteen per cent of those over 100,000 have done so.

TABLE I[2]

PERCENTAGE OF COUNCIL-MANAGER CITIES OF TOTAL NUMBER OF CITIES IN U. S. WITH POPULATION OVER 2,500

Population Group	*Number of Cities in Group*	*Cities with Council-Manager Plan*	
		Number	*Per Cent*
2,500 to 10,000	2,183	174	8
10,000 to 25,000	606	107	16
25,000 to 50,000	185	34	18
50,000 to 100,000	98	23	23
Over 100,000	93	17	18
	3,165	355	

The past year has witnessed also the publication of the first serious attempt to analyze the causes for the abandonment of the manager plan.[3] Its author lists eighteen cities and towns in which manager government has been disestablished. It would seem that he was scarcely justified in including three of them—Michigan City, Indiana, which lost its manager government by reason of a decision of the Indiana supreme court on the constitutionality of the optional city manager act, and Dearborn, Michigan, and Missionary Ridge, Tennessee, which lost their identity as a result of annexation to larger cities. Deducting these three, the total of fifteen is not at all impressive. Most of the abandoning cities have been small and unimportant, and in the two largest—Akron, Ohio, and Nashville, Tennessee—the city manager plan was never given a fair trial. In several instances, the manager charter was taken away by the legislature, which leaves in doubt the

[2] Clarence E. Ridley, "Recent Developments in Council-Manager Government," *Municipal Index*, 1931, pp. 120-122.

[3] Arthur W. Bromage, "Why Some Cities Have Abandoned Manager Charters," *National Municipal Review*, XIX, 599-603, 761-766 (Sept. and Nov., 1930).

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real wishes of the people. Many of the so-called abandoning cities never really had the manager plan. For example, in Albion, Michigan, the manager was obliged to chase speeders on his motorcycle to help out the police department, and to hop the fire truck on an alarm of fire to help out the fire department. He was a general utility man, not a manager. It cannot be wondered at that the plan failed to impress the people of Albion very deeply. Santa Barbara, California, affords another type of experience in which abandonment had little to do with the merits of the manager plan. Santa Barbara had as its chief organ of public opinion a rule-or-ruin newspaper which at length succeeded in creating a state of mind in which no institution could stand—certainly not such an imperfect instrument as the Santa Barbara charter. Then there are certain Florida cities which abandoned the plan in the desperation following the collapse of the boom, when the population, like a wounded bear, was ready to bite off any head that showed itself.

Another aspect of the managership which has received statistical demonstration is the increasing tendency toward professionalization. The following two tables, made up from the "Official Directory of Council-Manager Cities and City Managers" published annually by the City Managers' Association in its *Yearbook*, indicate the steady progress which is being made toward stability of tenure.

TABLE II

LENGTH OF SERVICE OF CITY MANAGERS IN CITY OF INCUMBENCY

	July 1, 1920	*March 1, 1925*	*January 1, 1931*
Less than one year	62	36	74
1-2 years	44	74	69
2-3 years	31	55	66
3-4 years	9	42	37
4-5 years	5	24	31
5-6 years	..	21	25
6-7 years	4	15	17
7-8 years	..	6	17
8-9 years	1	4	14
9-10 years	1	..	9
10-11 years	..	..	8
11-12 years	..	1	7
12-13 years	..	..	7
13-14 years	..	..	3
14-15 years	..	..	2
	157	278	386

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TABLE III

LENGTH OF SERVICE AS CITY MANAGERS OF MANAGERS IN OFFICE

	July 1, 1920	*March 1, 1925*	*January 1, 1931*
Less than one year	54	29	35
1-2 years	43	67	64
2-3 years	32	51	56
3-4 years	9	43	42
4-5 years	5	26	36
5-6 years	3	23	39
6-7 years	7	20	24
7-8 years	1	10	28
8-9 years	1	4	19
9-10 years	2	1	14
10-11 years	..	1	16
11-12 years	..	4	8
12-13 years	..	..	13
13-14 years	..	1	4
14-15 years	..	..	4
15 years and over	..	..	3
	157	280[4]	405

The detailed information on which these estimates of length of service were based has not been published, but they are certainly not far from accurate. The author of these notes wrote in 1926: "Faith in the manager plan awaits complete demonstration, but it is reasonably supported by the facts as we know them." Another five years of experience have served to confirm this tentative conclusion. There is, of course, no certainty that the manager plan will ever be extended so that managers will become as numerous as mayors are now, but all indications point more strongly that way than they did five years ago. Approximately a hundred cities—an increase of nearly one-third—have been added to the manager roll since 1925. In the same period, but

[4] Two managers are added to this table who were not considered in the preceding table because they took office on March 1, 1925. Mention should likewise be made of five managers who have served two terms in the same city, but whose previous terms are not considered in this table.

In the article previously quoted, Dr. C. E. Ridley gives the average length of service of city managers as follows:

January, 1916—1 year, 7½ months
January, 1921—2 years, 15 days
January, 1926—3 years, 4 months
January, 1931—4 years, 11 months

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eight cities—none of them of much importance, and none of them under circumstances of serious discredit to the plan—have abandoned manager government. There were then but seven manager cities of over 100,000 population. There are now seventeen. The manager plan has ceased to be a novelty, but it has not declined in popular favor. In fact, it is spreading, not very rapidly, it is true, but with impressive steadiness. Experience with the plan has demonstrated that it will work in large and small cities more satisfactorily, on the whole, than any other plan of municipal organization yet discovered.

For one thing, the last five years have shown that the plan can be a success in large cities. Cincinnati, prior to the adoption of the charter amendments of 1925 one of the worst governed cities in the country, now has a superlative administration based on successfully organized popular support of the city manager principle at three council elections. In Rochester, New York, where the plan went into effect on January 1, 1928, it has apparently given satisfaction to the majority of the people, and has successfully weathered the critical second election of councilmen in November, 1930. Cleveland has been a constant battleground; four times in the last six years the foes of the manager plan have brought before the people proposals for its abandonment. They have been successfully repulsed by majorities small but dependable and unflinching. The managership in Cleveland has been treated as a political post, both of the two managers up to now having been named by the dominant political machine. Both have, however, been men of ability and character who have given the city administrations which, on the whole, compare favorably with the best of the old régime. In Cleveland particularly, the plan has shown itself adaptable to a situation of which bitter party and factional struggles and strong political machines are characteristic. This is perhaps the hardest test to which the manager plan can be put. In none of these cities has there been noticeable failure in vision or leadership such as some critics have feared was inevitable in large cities. Indeed, no American city has ever enjoyed more effective leadership than Cincinnati has had under its present form of government. In Kansas City, it is true, the managership has not been able to rise above the level of the political organization which controls, as it did before the advent of the new scheme of government, the destinies of that city. The manager plan is no automatic means of producing good government. It can only reflect the ideals, or lack of them, in the men whom the processes of democracy bring to the city council. Even in Kansas City, however, there has been

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no weakening of popular interest in or control of the city government. At his worst, the manager acts like a mayor—that is all. A rapid survey of the character and achievements of the mayors of our larger cities in comparison with the managers of Cleveland, Rochester, Cincinnati, and Kansas City will convince anyone not blinded by partisan or personal considerations that councils can select an executive more wisely than the people can elect one.

Mixed Mayor-Manager Government. Considerable attention has been attracted during the past year to proposals to combine the managership with a powerful elective mayorship, or in other words to make the manager the servant of the mayor rather than of the council.

Detroit. Dr. Lent D. Upson, of the Detroit Bureau of Governmental Research, made the suggestion that there should be established in Detroit the office of "administrative assistant to the mayor," and that the incumbent should act as the mayor's deputy in administrative matters at a salary of at least fifteen to eighteen thousand dollars a year. The administrative assistant, under Dr. Upson's plan, would be appointed by the mayor from a list of eligibles prepared by the civil service commission, but might be removed by the mayor at his discretion upon presentation of charges. Dr. Upson sums up the advantages of this scheme under five heads:[5]

"(1) A very considerable proportion of administrative detail could, and probably would, be delegated by the mayor to such officer. As new mayors came into office, unfamiliar with the details of public affairs, it is probable that more and more responsibilities and duties would find their way to the desk of the assistant. Certainly a large part of a mayor's time is now taken in making decisions which could be done equally well or better by someone having a continuous knowledge of the issues involved.

"(2) An incoming mayor would have as his aid an official entirely familiar with the administrative features of the government, and from whom he could quickly have the facts at hand with respect to any administrative problem raised. This condition does not exist at the present time, particularly if the more important officers go out of office with the outgoing mayor.

"(3) Experimentation and improvement in administrative procedure and the carrying out of administrative programs probably

[5] "A Proposal for an Administrative Assistant to the Mayor," Detroit Bureau of Governmental Research, Report No. 123.

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would be continuous regardless of changes in the mayoralty, and would be subject to the continuous attention of a competent person. At the present time, the period between elections is so brief that no mayor has a proper opportunity to consider improvements in administrative procedure or to undertake their successful installation.

"(4) The mayor could continue as the policy promoting head of the city government, urging on the public and the common council definite governmental policies which may be for the benefit of the community. Under the city manager plan, this leadership in policies must rest in the common council, where ordinarily the division of power is such that no single individual can assume an outstanding position.

"(5) The successful selection of a competent person for the position of administrative assistant by the merit system should eventually suggest the application of a similar plan to the selection of the commissioner of public works, the controller, the corporation counsel, and the police commissioner, in particular, and probably of other officers immediately subordinate to the mayor, so that the periodic dismissal or resignation from office of these officials would be substantially curtailed."

This proposal has not gone beyond the stage of academic discussion. That it has some merit as a means of providing the mayor with expert assistance and advice in the performance of his very arduous functions is obvious. It is equally obvious that these advantages are not the advantages of the city manager plan. The administrative assistant is no more than an assistant, a subordinate of a powerful political officer. The results would depend very largely upon the willingness of the mayor to accept his suggestions. The proposal is really not much more fundamental than would be one to establish an official bureau of municipal research with the duty of offering information and advice to the mayor and other officials of the city.

Oakland. The people of Oakland, California, adopted at the November, 1930, election amendments to their charter providing for manager government in its traditional form. Mayor Davey, who for years has been the dominant political figure in Oakland, brought about the presentation, on the same ballot with the manager plan amendments, of a list of freeholders who, if elected, were to draft a new charter. The proponents of the manager plan, thinking that this was merely a device to throw dust in the eyes of the people, ignored the freeholder question and concentrated solely upon carrying the amendments. It thus happened that not only were the amendments adopted but the board of

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freeholders was elected. This board proceeded at once to the preparation of what it called a manager charter, which, however, provided for the popular election of a mayor with power of veto and power to appoint the city manager, the assistant city manager, the principal heads of departments, and many other important city officers and boards, and to remove the same at his pleasure. This remarkable document further provided: "The city manager shall be responsible to the mayor for the proper and efficient administration of all of the affairs of the city placed in his charge, and to that end, subject to the civil service provisions of this charter, . . . he shall have the power, after advising with the mayor and subject to the mayor's approval, to appoint, discipline, discharge and remove any head of a bureau, department, or subordinate officer or employee of the city responsible to him." Interference with the manager by the council, or with the council by the manager, is rigidly prohibited. Otherwise, the duties of the manager are set forth in terms not unlike those in other manager charters. Plainly, the manager was intended by the freeholders to be a mere servant of the mayor. Whether or not he would exercise any personal authority would depend upon the activity or non-activity of the mayor. The advocates of the city manager form of government, who had secured the adoption of the amendments at the fall election, opposed the adoption of the new charter, and at the election which was held on March 31, 1931, the freeholder charter was defeated; accordingly, Oakland remains in the city manager column.

Of course, the theory which underlies the thought of those who honestly believe that the manager should be responsible to the mayor is that a mayor may be an actual leader of public opinion in a sense which is impossible for the city manager, that under the manager form of government leadership must depend upon groups of citizens like the city charter committee in Cincinnati, and that the existence of such leadership is purely adventitious. This is, obviously, to deny that city councils are capable of assuming leadership in large cities. Opposition to this mixed mayor-manager government is based upon the apparently well-founded belief that a manager appointed by the mayor would never enjoy any practical degree of professional independence, and that therefore all the essential advantage of the manager plan is lost. It is believed, too, that the manager and council can between them provide the community with a better type of constructive leadership than anything which the mayors of our larger cities have been able to offer us in recent years.

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Metropolitan Government. *St. Louis.* The St. Louis project described by Dean Loeb in the last "Notes on Municipal Affairs" came to an untimely end through the defeat of the enabling constitutional amendment at the election of November 4, 1930. The amendment carried by a small majority in the city of St. Louis, and was defeated in St. Louis county—though by a vote which indicated a trend toward consolidation. In the state at large, however, it suffered heavily. It is to be borne in mind that all of the seven propositions on the ballot were defeated, and that a series of perfectly harmless charter amendments in St. Louis were strongly repudiated by the voters—that, in fact, the election took a decidedly negative turn. The public was in bad humor. The insurance companies organized a vote-no-on-everything campaign to make sure of the defeat of a proposal for a state workmen's compensation fund. The financial depression contributed in another way by making it difficult to raise money; and a state-wide educational campaign cannot be carried on without large expenditure, whatever the Nye committee may think about it. No effort to renew the battle for a Greater St. Louis will probably be made until 1932 at the earliest.

Pittsburgh. At its 1931 session, the Pennsylvania legislature passed a proposed constitutional amendment altering the two-thirds majority required in a majority of the units in Allegheny county for the ratification of the Greater Pittsburgh charter to a simple majority in a majority of the units. This measure will have to be passed by the next session of the legislature and then submitted to the people and passed by them before further action on the charter will be possible.

Cleveland. The proponents of a Greater Cleveland presented to the legislature an amendment to the Ohio constitution which would have enabled the legislature to deal with the question of county reorganization by the adoption of model county government acts, and would have permitted in Cuyahoga county the establishment of a Greater Cleveland, retaining the existing city of Cleveland and the other units in the area as elements in the scheme, provided a majority of the people in Cleveland, a majority in Cuyahoga county outside of Cleveland, and a majority of the people in a majority of the units outside Cleveland voted in favor of so doing. This measure, like its predecessors, met defeat.

Boston. The committee appointed by Major James M. Curley for the purpose of studying the question of metropolitan consolidation and of formulating a measure to be submitted to the legislature ultimately

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presented two bills to the Great and General Court of Massachusetts. Both were referred to the next annual session.

Atlanta. One of the readiest arguments on behalf of metropolitan consolidation has been the additional census rating which would thereby be acquired by the city. The ruling of the census bureau refusing to recognize the "municipality of Atlanta" and the decision of the court of appeals of the District of Columbia upholding this ruling[6] have occasioned some alarm to the "greater population" advocates. The Georgia legislature, in August, 1929, united the city of Atlanta and several outlying communities to form the so-called "municipality of Atlanta." Provision was made for a governing body for this municipality, which, however, was given no general powers or powers of taxation. It was authorized merely to make plans and offer advice to the existing units pending the creation of a real "greater city." The census bureau refused to recognize the municipality of Atlanta as a unit for census enumeration. Atlanta protested the ruling and carried it to the federal courts. The court of appeals of the District of Columbia upheld the authority of the census bureau to determine what units it will recognize. The court, of course, did not pass upon the main question involved, but merely upon the right of the census bureau to settle that question. It is pretty clear that the municipality of Atlanta was not a bona fide unit of local government. It was simply a unit created for the purpose of obtaining a higher population rating. If a state creates a city with general powers of government and taxation, although reserving certain powers to boroughs or other units within it, the probability is that the census bureau will accept the state's determination that the "greater city" is a city. The Atlanta case scarcely decides this issue.

[6] U. S. *ex rel.* Atlanta v. Steuart, *U. S. Daily,* March 3, 1931.

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The Position of the British Parliament. The British Parliament has been passing through a period of pianissimo. Its praises should be sounded very softly, while its inadequacies and imperfections should be given wide attention. This does not imply a lack of veneration and respect for the Mother of Parliaments, but merely that a realistic approach should be made to the present-day value of this progenitor of the sturdy race of legislatures. No political institution is eternally successful, and even British institutions which have evolved so slowly, and in general so soundly, are no exceptions. The halo which surrounds Westminster is so great, however, that it almost blinds one to the imperfections which exist within those hallowed precincts. It seems almost sacrilegious, as a great British statesman recently observed, to attempt to meddle with "those great forms of procedure which have been handed down to us." And yet when the Mother of Parliaments has so obviously deteriorated as to lose much of the respect and prestige which was formerly its possession, one seems justified in calling attention to its inadequacies.

The fact is that in the last thirty years Parliament has gradually become an inefficient legislative body which does not effectively control the government, and which the people can hardly be said to control. As early as 1908, President Lowell wrote that "the House of Commons is finding more and more difficulty in passing any effective vote, except a vote of censure."[1] In 1931, it is doubtful whether even this can be done in a satisfactory way. In his notable book, Mr. Ramsay Muir recently wrote that "it is merely absurd to say that Parliament 'controls' the cabinet in its executive functions;" and further, that "Parliament has next to no independent control over either legislation or taxation."[2] "The business of the member of Parliament," says Professor Laski, "is not to discuss but to vote, and Parliament has ceased to be able effectively to do its work."[3]

This unsatisfactory position of Parliament strikes most recent observers, and it has at last sunk into the official consciousness. Shortly after becoming prime minister, Mr. Ramsay MacDonald appointed, on October 31, 1929, a government committee headed by the Earl of Donoughmore "to report on the safeguards necessary to secure the

[1] *The Government of England*, I, p. 355.
[2] *How Britain is Governed*, pp. 14-15.
[3] *Manchester Guardian*, Dec. 19, 1927.

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constitutional principles of the sovereignty of Parliament and the supremacy of law.''[4] Mark the words carefully. Obviously, His Majesty's Government is at last convinced that Parliament has lost its one-time preëminent position.

How has this condition come about, and what evidence have we of parliamentary decrepitude and incapacity?

In the first place, the British Parliament has had unloaded upon it in the last quarter of a century a number of enormous burdens. As in other countries, so in Britain, governmental activities have doubled and tripled and quadrupled in variety and quantity. As late as the fiscal year 1913-14, the total national expenditure amounted to about one billion dollars. But in 1925-26 it was over four billion dollars. The mere mention of the Old Age Pensions Act, the National Insurance Act, the various acts extending the powers of the Board of Trade, the creation of the Ministry of Mines, the Ministry of Health, the Ministry of Labor, and the Ministry of Transport gives concrete evidence of the amazing increase in the functions of government. Every new governmental activity has added to the burden of work which Parliament is supposed to do. Unfortunately, however, these new governmental activities have been set up and provided for without, at the same time, adequate provision being made within Parliament for their control. But the point here is merely that increasing work is one of the chief contributing causes of parliamentary debility. A tired old machine could hardly be expected to carry an increased load of unexampled proportions.

But perhaps more important as deciding factors in the changed status of Parliament have been the recent rapid extensions of the franchise and the remarkable growth of party organization. The democratizing of the electorate might well be expected to democratize Parliament and to place the control of that august body more in the hands of the citizens than had previously been the case. The theory of the British system is that the people choose and control their Parliament, and Parliament chooses and controls the cabinet—in effect, therefore, that the people can secure the executive for which they vote. Not so today. Contemporaneous with the growth in the electorate has come the growth of party organizations. With an enormous, heterogeneous electorate it is necessary to pay attention to organization, and in the

[4] See *Labour Bulletin*, Jan. and Feb., 1930, for the membership of this committee, together with the membership of all other committees which have been set up since Labor came to power.

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last twenty-five years the whole face of British parties has undergone a change.[5] The party machine has assumed a recognized and controlling position in the British political order; and Parliament, being the central cog in the governmental machine, has quite naturally been most vitally affected by this party development.

Many observers are inclined to blame the government, the cabinet, for the loss of parliamentary power. But this is not the whole story. As an M.P. has recently put it: "It is not the government which has subdued Parliament, nor the prime minister with his threat of dissolution, but the chief whip with his ultimate verdict as to reëlection at all. It is the scores of thousands of local party committee-men who control Parliament, it is the hundreds of thousands of canvassers and workers *without whom no man or woman can gain or hold his seat.*"[6] In other words, the party machine has extended its tentacles into Parliament to control the individual member, and as a result both the cabinet and the Parliament have a changed relation toward each other and toward the electorate. On top of the increased burden placed upon it, therefore, Parliament has had to alter its position to conform with the inevitable but great development of party organization.

Furthermore, there has gradually developed in Britain a third party, a third body of political opinion, represented by the Labor party. The rapid and phenomenal growth of this party to the position it now occupies as the most powerful party in the state has had a great effect upon the whole British system. So far as the machinery of parliamentary elections is concerned, the existence of a third party greatly complicates, if it does not render out of date and unsatisfactory, the existing system of election. The danger of minority representation, of an unrepresentative Parliament, is always present. The House of Commons and the constituencies may be, and frequently are, at cross purposes. The *Manchester Guardian* stated the situation baldly when it remarked in 1928 that "we have two Houses of Parliament, and neither of them represents the majority of the nation. Nor does the Government."[7]

Until recently, however, there has been little effort to meet the situation. A committee representing all parties, under the chairmanship of Viscount Ullswater, was appointed in the fall of 1929; and after

[5] See my study entitled "British Party Organization," in *Political Science Quarterly*, XLV, pp. 161-180 (June, 1930), for a treatment of this question.

[6] *Political Quarterly*, I, p. 366.

[7] Jan. 9, 1928, editorial.

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several months of consideration it failed to reach any general agreement as to the amendment of the British electoral system.[8] The prime minister, however, has announced his intention of tackling the problem in the present session of Parliament, and we can only await the enactment of his proposal with the hope that it will bring to an end the criticism which now is so justified, namely, that Parliament is not accurately representing the nation.

The growth in government activities, the extensions of the franchise, and the growth of party organizations, together with the introduction of a third party into the state, have all combined to render the British Parliament of Bagehot and his classical successors quite impotent to control policy and administration. On the surface, there is little change. The forms and ceremonies of earlier centuries have survived. Members still indicate emotions by the voice and not by applause; they still bow to the Speaker—or at any rate most of them do; and they are still summoned to the House of Lords by Black Rod.

But when one diligently observes Parliament day in and day out, and takes the pains, as Professor Muir has so admirably done, to go behind forms and statutes and appearances, one can easily observe wherein Parliament has lost its former glory and power. A few particular instances of parliamentary incapacity or inefficiency come readily to the fore.

Take, for instance, what the British call "legislation by reference." One has been taught to have the greatest respect for the form and content of British statutes. But in recent years there has been loud complaint from many of the ablest members against presenting to Parliament bills which are not in understandable form. Sir John Simon complained about a recent important bill that it required "a form of parliamentary treasure hunt. Bills are not in plain English," he said, "but in double Dutch. They have an air of a Chinese puzzle. Legislation should be enacted in such a form that a person who was prepared to take the trouble—a social worker, a political agent, a subordinate official in a trade union—might have the document before him and use it."[9] Lord Carson, in discussing a bill, said that "this is what we have been protesting against at the bar, on the bench, and in the House of Commons ever since I came into Parliament thirty-five years ago—

[8] *Conference on Electoral Reform, Letter from Viscount Ullswater to the Prime Minister,* Cmd. 3636 (1930).

[9] *Parliamentary Debates, Commons,* Vol. 211, col. 1768 (Dec. 9, 1927).

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legislation by reference. But it is legislation by reference gone stark, staring mad. I never in my life read such a production.''[10]

Arising out of this same point we find voluble and learned criticism of bureaucratic ''despotism,'' as Lord Hewart calls it. Parliament, being unequal to its herculean tasks, has gradually lost to the administrative services control over important matters. Delegation of power has gone far, and there is a strong suggestion that arbitrary actions have increased. If Whitehall is not subservient to Parliament, as it clearly is not, and if, as Lord Hewart insists, it is not subject to proper restraints by the courts, we do have indeed a ''New Despotism.'' The point deserves close attention. By the terms of reference, the Donoughmore committee is required to interest itself in the means necessary to ''secure the supremacy of law'' as well as to ''secure the sovereignty of Parliament.'' Both phases of the problem are of critical importance to the integrity of British political institutions.

Consider also the way in which parliamentary machinery has become clogged. The history of the last fifty years has been a history of the development of various mechanisms for the prevention of discussion. And by claiming ''pressure of business'' the government can rush the most important matters through the Commons. The recent report of a House of Commons committee on its hours of sitting suggests an institutional bankruptcy which needs no emphasis. So much business must be transacted, and so little time exists for doing it, that the machinery is always clogged, and many urgent bills, even under the ''gag rules'' in existence, cannot be got through in a session.

Observe how question time is consumed. A recent writer rightly pointed out how the importance of the question hour is steadily declining. ''Not only is no debate allowed,'' he wrote, ''but supplementary questions are severely restricted. It is just possible to rush through the 100 questions in the hour.''[11] Question hour is really a trivial catechism which ministers go through with a surprising lack of interest, and in recent years it has been very rare to find questions causing motions ''to adjourn to consider a definite matter of urgent public importance.'' In 1925, 1926, and 1927 there was not a single such motion.

The standing committees which were supposed to assist the House of Commons in carrying its great load have not been successful. They

[10] *Parliamentary Debates, Lords,* Vol. 69, col. 1023 (Dec. 15, 1927).
[11] *Political Quarterly,* I, p. 351-361.

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are too large; they follow the procedure of Parliament; they waste time; and they do not have the real discussions over the table which occur in American congressional committees.[12]

But more essential than all these criticisms is the criticism of the way in which Parliament handles financial matters. The control of the purse is vital, and yet it is now clear that the House of Commons is a very poor agency for criticizing the estimates. It has practically abdicated its power to the cabinet. The budget statement is ill adapted for disclosing the true financial position of the country, and very few persons are able to find their way through its devious passages. The inability of the House of Commons to control expenditure and to ensure economy is largely due to this unintelligibility of the national accounts. All votes on the budget still involve the fate of the government, and under this system desirable changes in the budget and effective control by Parliament are in practice eliminated.

Voting in the Commons has become a good deal of a form. A quarter of an hour is wasted on each division, when on a straight party question everybody knows what the result will be. Independent voting is almost unknown. Members file into the division lobbies like so many soldiers obeying orders. Party discipline is nearly one hundred per cent perfect. But of course voting records are kept and published, and are used in political campaigns, and so the dismal divisions on every point must be taken.

Finally, the membership of Parliament has undergone a considerable change. As Mr. Muir has so well pointed out, the election system "notoriously fails to sort out the most suitable men for the work of Parliament, and excludes many men of distinction whom almost the whole nation would desire to see included in its membership."[13] One can easily observe this in watching the House of Commons. It is doubtful whether Bryce could today place his own House of Commons on a higher level of ability than the American House of Representatives. Many men of ability do not cherish the dismal inaction of a back bencher. They do not relish the constant application of the party whip, and they are not keen to risk their political fortunes with an election system which is somewhat of a gamble. They may express opinions in the Commons without influencing the course of debate and without in-

[12] A good, recent criticism of the standing committees appeared in the *New Statesman*, XXXV, p. 460 (July 19, 1930).

[13] *Op. cit.*, p. 169.

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structing the country. They no longer give their instructed judgment to the working of the English constitution.

The House of Lords contains many men of great ability, and yet, in the words of Lord Charnwood, "it has been belittled and reduced to a condition bordering upon absolute futility. We know perfectly well," he said, "that toward the conclusion of every session we are called together to discharge work which we cannot discharge to our own satisfaction or to the complete satisfaction of anybody else. Year by year we come together, and there follow long weeks and months during which our life corresponds, to put it plainly, to the description given in a famous song that the House of Lords did nothing in particular and did it very well."[14] Another noble lord on another occasion remarked that the House of Lords "is disappearing from inanition."[15] Its talents are not utilized in legislation, and it is not able to make any substantial contribution toward efficient government.

These evidences of decrepitude and inefficiency in the British Parliament—and the list has by no means been exhaustive—should be sufficient to demonstrate the fact that the Mother of Parliaments is fast approaching a crisis. The system by which it is elected is faulty. Its internal procedure is antiquated. It has become an organ of registration for the cabinet. The essence of law-making has passed from its hands over to the civil service; or, as one writer has put it, "the Mother of Parliaments has become the charwoman of Whitehall."

A critical situation demands heroic measures, and the policy of muddling through will not suffice to improve the governmental situation any more than it has sufficed to improve the economic situation. It is to be hoped that the Donoughmore committee, and any and all committees which may be set up to study the situation, will not only focus public attention on parliamentary difficulties, but also lead to improvements in what is clearly a bad situation.

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Chambres de Commerce: Their Legal Status and Political Significance. The public character of the chambers of commerce in France and in Europe generally is a commonplace. Their intimate relationship with the government is taken as a matter of course. This very

[14] *Parliamentary Debates, Lords,* Vol. 70, cols. 317-321 (March 1, 1928).

[15] *Ibid.,* Vol. 70, col. 324.

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complacency is significant acceptance of the close rapprochement of the political and economic hierarchies. These organizations of entrepreneurs in France function as the legally recognized representatives of definite interests. It is regarded as no novel idea that business men as such have public duties and governmental responsibilities that must be conducted in coöperation with the state. The *chambre de commerce* is the usual agency for carrying on these contacts; it is classified as a "*personne civile*" and an "*établissement public.*"[1] It is provided for by statute, given specific powers, and entrusted with definite functions. It is representative of local business men holding a mandate from the Republic authorizing them to perform specified tasks of government and requiring them to offer advice upon commercial and industrial problems.

Regarded merely as agencies through which the government may secure a degree of perfunctory agreement from a selected number of employers and capitalists, the *chambres de commerce* would have little to offer. They are significant, rather, because of the fact that they provide a recognized means whereby discussion may be held upon questions by those who are directly affected by the outcome. Through such a consideration, the opportunity is offered to secure not only acquiescence but also understanding. The winning of consent is but one step in legislation. There must be sufficient prescience exerted at the same time to envisage the repercussions of the statute when in actual operation. Administrative considerations are thus part and parcel of the legislative process. Accordingly, for a law to prove successful it must be foreseen as falling within the context of experience of the individuals whom it affects. *Lex* is not a juristic *deus ex machina.* Rather, it must arise in intimate accord with a given environment. Coöperation rather than coercion must be depended upon if the public service functions of the state are to be conducted efficiently. Hence in administering laws of a technical nature dealing with complicated economic and social questions, something more than passive acceptance is demanded. An ascertainment of the effect of a law upon the class immediately affected is desirable, at least in terms of their attitude toward it. If their expert eyes can be utilized, so much the better. When particular issues fall within a given interest-sphere, the position taken by those dwelling within its scope will, in large measure, be determined by the fact that they view public questions from this zone. This al-

[1] Th. Ducrocq, *Droit administratif, Personnes civiles autres que l'état* (1905), p. 567.

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legiance affects the individual's response to outside stimuli. The group itself has force simply to the degree that the interrelations it engenders cause a reaction that could not occur should the individual members not be mutually participant. This mingling, moreover, brings into effective expression thoughts and feelings within the responding individuals that would otherwise remain inarticulate. Organization makes their enunciation possible, and some formal connection with the government assures a hearing. The status of the *chambres de commerce* provides a means whereby the business man as such may participate in government.

II

The statute of April 9, 1898, is regarded as the charter of the present chambers of commerce.[2] It defines their powers and delimits their authority, and upon it are based their powers. The statute provides that there shall be at least one chamber of commerce in each department to look after the commercial and industrial interests of this jurisdiction. The chambers are instituted by decrees, in the form of public administrative regulations, on the proposal of the Ministry of Commerce. The decree establishing the chamber indicates the number of members. There may not be fewer than nine nor more than twenty-one, except in Paris, where thirty-six are allowed. The members are elected for a six-year term, one-third being chosen every two years. They choose their own officers, though the prefect of the department, or the sub-prefect, according to the locality, may participate in the deliberations of the chamber in an advisory capacity. The members of the chamber serve gratuitously. The qualifications of those who may vote in electing members to the chambers are fixed by law. In general, it is stipulated that men and women may vote in these elections who have engaged in certain commercial undertakings for a definite period of time.

[2] A full collection of all the laws and ordinances on the subject is to be found in *Annuaire des chambres de commerce et chambres consultatives des arts et manufactures*, published by E. Baudelot, 41 Avenue Reille (xiv) Paris. The secondary reference material directly relating to chambers of commerce is scanty. The most satisfactory sources are the reports and proceedings of the chambers themselves. For a list of available reports, see A. Grandin, *Bibliographie générale des sciences juridiques, politiques, économiques et sociales*, Premier supplement (1926-1927), pp. 30-31. The following references are suggested: G. Guillaumot, *Les Chambres de Commerce avant et depuis la loi du 9 avril, 1898* (Berger-Levrault, Paris, 1898); M. Guilland et M. Hamelet, *Les Chambres de Commerce, leur passé et leur avenir*, 1908; *Fédération des industriels et commerçants* (Larose et Tenin);

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The powers of the chambers as given in the statute are briefly as follows: (1) to present their views as to means of promoting industrial and commercial prosperity; (2) to assure the execution of the public works and the administration of the services for which they are responsible; (3) to give the government advice and information, when requested, on industrial and commercial questions.

The advice of the chamber can be requested on a variety of commercial matters, as, for example, regulations relating to commercial usages, the creation of new commercial agencies, and questions with regard to taxation, or price scales for the hand-work of prison labor. Independently of the counsel that the government always has the right to ask of them, the chambers of commerce on their own initiative may offer advice upon (1) proposed changes in commercial and economic legislation; (2) tariff rates; (3) the rates and regulations of transportation services granted by the public authorities outside the extent of one chamber's jurisdiction but affecting its district; (4) the rates and regulations of establishments of a commercial nature functioning within the jurisdiction of the chamber by virtue of authorization of the administration.

The chambers communicate directly with the ministers, and they may inform the minister of commerce on all matters relating to the operation of the services with which they are entrusted. Each year they send in a complete report of their work. Certain financial rights are accorded them because of their "public service" aspect. Their expenses are met by means of a special license tax. When the chambers have contracted debts in carrying forward public works, particularly

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L. Savare, *Des Chambres de Commerce* (Caen, 1904); G. Lechevalier, *Du rôle économique et financier des Chambres de Commerce dans les ports maritimes* (Paris, 1906); *Compte rendu des travaux de la Chambre de Commerce de Paris* (Librairies-Imprimeries réunies, Martinet, Directeur, rue Saint Benoit, 7, Paris); De Vidaillan, *Histoire des counseils du roi depuis l'origine de la Monarchie jusqu'à nos jours* (1856); Henri Rollet, *Les Chambres d'Agriculture* (1926); Parlement et l'Opinion, *Du rôle des Chambres de Commerce''* (Mars, 1919); *Journal des Chambres de Commerce françaises et étrangères,* fondé en 1886; P. Messerschmitt, *Les Chambres de Commerce allemandes, leurs organisations, leurs interventions dans la vie économique* (Paris. 1926); L. Dessauer, *Die Neugestaltung des deutschen Handelskammernwesen* (Leipzig, 1917); F. Huber, *Die Handelskammern* (Stuttgart, 1906); Lusinsky *Handelskammergesetz* (Berlin, 1909); P. Zorn, *Die staatsrechtliche Stellung der Handelskammern* (München); Rudolf Beres, "The Organization of the Professional Chambers in Poland," *Rev. Polish Law and Economics* (1928), pp. 283-301.

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in connection with the ports, the levying of a toll or tonnage tax is recognized by law as a proper means of their paying such expenses.

Chambers of commerce have extensive powers to establish various agencies of a commercial nature. They are authorized to found and to administer commercial establishments, such as general storehouses, public sales-rooms, warehouses, proving grounds for the army, bureaus of standards and of inspection, permanent expositions, commercial museums, commercial and professional schools, and courses of instruction upon commercial and industrial matters. The administration of establishments of these kinds that have been founded by private initiative may be turned over to the chambers of commerce with the consent of their underwriters or donors. This is likewise true of similar organizations instituted by the state, the department, or the commune. Regulations or schedules of rates made by the chambers with regard to these establishments are subject to official confirmation by law, by ministerial decree, or by approval of the prefect, as the case may demand. The chambers of commerce can be declared *concessionnaires* of public works, notably those which have to do with seaports or the navigable waterways of their district. The chambers of commerce can deliver certificates of origin for French merchandise destined for export abroad and cards of legitimization (identification cards) required of commercial travelers in foreign countries. Each year, the chambers of commerce are invited to present to the Ministry of Commerce proposals with a view to the designation of associates to the export commissioners on tariff matters.

Such are the chief provisions of the law outlining the statutory basis of the chambers of commerce.

III

The operations of the chambers of commerce are interesting from two points of view, namely, the national and the local. Their turning now toward the one and now toward the other gives these bodies a strategic position in administrative affairs. In the elaboration of laws relative to industry and commerce, the national authorities consult with the chambers of commerce. The fixing of tariff schedules, the formulation of labor legislation, the regulation of transportation rates provide frequent opportunities for the chambers to intervene efficaciously, or to offer advice. "Leurs avis ne sauraient être négligés sans péril," reports the secretary of the Paris chamber.

Fully as important as the mere passage of a law is the winning of

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support and coöperation from those whom the law affects. The chambers stand ready to give their opinions as to the conditions under which proposed reforms in commercial affairs can best be secured. They are peculiarly well qualified to discuss the probable effect upon industry of projected legislation. Their province is by no means confined to legislative problems. The secretary of the Paris chamber reports that because of their special competence and practical experience the industrialists and business men belonging to chambers of commerce are frequently called upon by the ministries and the important governmental bureaus to serve upon the numerous official commissions organized for the consideration of current problems, both civil and military.[3] In going through the annual reports of chambers in various parts of France, one encounters numerous instances of the coöperation of the local agencies with the central government and of the latter's frequent consultation with these business men's organizations.[4] This, however, is but one aspect of the relationship; as contrasted with the participation in national problems, the chambers' concern in local governmental affairs is of greater significance.

Certainly, local questions seem to dominate over national problems. A very fundamental characteristic of these chambers of commerce is their provincialism, and attendant upon the merits that inhere in the resultant intimate knowledge of local conditions there is the accompanying fault of narrowness of interest. They are zealous in obtaining advantages for their region and in participating in any favors that other chambers succeed in obtaining from the central government. This trend toward localism is not, however, the pernicious tendency that it may at first appear. In France, the excessive centralization of power in the hands of the national government makes desirable these countervailing agencies whose chief concern is with local matters. In fact, when the law of 1898 was passed granting such a variety of powers to the chambers the fear was expressed that the economic federation thus created might conceivably in time endanger the authority of the central government.[5] The supervisory power of the prefect has doubtless been an

[3] *Annuaire des Chambres de Commerce*, pp. xvii-xviii.

[4] The reports consulted were chiefly those of Paris, Amiens, d'Alger, Bordeaux, Mostaganem, Mazamet, Rouen, Nice, Du Mans, Roubaix, Nantes, Lyon, and Marseille.

[5] Georges Guillaumot, *Les Chambres de Commerce avant et depuis la loi d'avril 1898* (1898); Joseph Ferrand, *Césarisme et Démocratie, l'incompatibilité entre notre régime administratif et notre régime politique* (1904).

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important factor in guiding and limiting such a development. Still *les chambres de commerce* do serve as a counterpoise to the inflexibility of routine performance and the disregard of the public that not infrequently occurs in a strongly intrenched bureaucracy. Because of the hierarchical structure of the government and the degree of administrative centralization in France, an unorganized community is no match for the disciplined and ordered governmental authorities. The organizations of business men, however, seem sufficiently strong, as well as stable, to enable them successfully to check the civil servants where interference is deemed expedient. This is the more important when it is remembered that the government has the power to interfere in matters which are essentially local. It is a salutary thing, for example, to find M. le Préfet inviting the *Chambre de Commerce de Rouen*[6] to give advice with regard to modifications of the specifications for the improvement of the tramways of that town. It is well to find the minister of commerce consulting with the union of maritime *chambres de commerce* upon a bill introduced in the Chamber of Deputies authorizing the creation of certain free zones at maritime and river ports. Nor does it seem amiss to find chambers taking united action in protesting against a pending administrative rule whereby the department of finance at Paris would exercise control over certain tolls which the chambers themselves previously had the right to administer. Local interests must be protected from undue interference by the central authorities.

Localities are even found importuning the national authorities to grant favors. To such an end, log-rolling apparently is resorted to at times. The following naïve recital, taken from the annual report of the chamber of commerce at Bordeaux, is illustrative.[7] For a period of years the good citizens had been agitating for the improvement of Verdon in order that it might be used as a port of call. A bill providing for the necessary improvements met with opposition time and again. At last, however, the president of the chamber is able to report success, and to commend the devotion and prophetic vision of his colleagues. He continues in this revealing passage: "I must recall to your minds particularly the cordial coöperation that we were offered by our colleagues in the chamber of commerce of La Rochelle-

[6] *Bulletin Bimestriel de la Chambre de Commerce de Rouen,* November-December, 1929, pp. 429 ff.

[7] Chambre de Commerce de Bordeaux, *Rapport du Président sur les travaux de la Chambre,* p. 6.

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Pallice and by the deputies of Gironde and of Charente-Inférieure whose concordant intervention secured the vote for the law concerning Verdon, unitedly with that relative to the improvement and extension of the port of La Pallice. Furthermore, we must not forget the support that the senators of Gironde gave us unanimously, and likewise the decisive intervention of M. Charles Chaumet, who, in their name, presented before the upper chamber the victorious defense of our bill, which was criticized with perhaps more passion and talent than convincing forcefulness.'' Whatever may have been the faults of the opposition, the fact remains that the two factions joined forces and each secured its desired bit of ''political pork.''

To an interest in local affairs must likewise be joined a deep concern with class welfare. Toward social and labor legislation, the organized business men evince very little sympathy. Many instances from the reports of the chambers could be cited in substantiation of this. The *Chambre de Commerce de Marseille,*[8] for example, expresses opposition to a further liberalizing of the laws concerning industrial accidents and workmen's compensation. The chamber of Bordeaux[9] takes an unfavorable attitude toward an eight-hour law, toward legislation protecting laborers injured while at work, and toward a proposed change in the rules with regard to healthy factory conditions. The *Chambre de Commerce d'Amiens*[10] draws up resolutions against a law permitting workers of less than eighteen years of age to take time off during working hours in order to receive technical instruction in their trade. An examination of the reports of a large number of chambers gives one the impression that the chief concern is with the immediate interests of the employing class.

The proceedings of the *Assemblée des Présidents*[11] *des Chambres de Commerce* give the same impression. As the name implies, this is a national representative body of the leaders of the various chambers. A report of a recent meeting shows action taken upon a limited range of subjects, in every case closely allied to the immediate interests of the members. Retaliatory measures were urged against the high tariff of the United States; change in the taxation of coöperatives was de-

[8] *Bulletin de la Chambre de Commerce de Marseille,* Apr., 1929, pp. 389 ff.

[9] *Rapport sur les Travaux de la Chambre* (Années 1926-27), pp. 14-15.

[10] *Bulletin Mensuel de la Chambre de Commerce d'Amiens,* Jan., 1929, p. 8.

[11] *Bulletin Bimestriel de la Chambre de Commerce de Rouen,* May-June, 1929, pp. 210-211.

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manded on the ground that competitive business was being discriminated against; the increased tax on coal was protested; a slow and cautious policy toward social insurance was recommended. Hardly a body for forward-looking leadership! Yet it is significant as reflecting the opinion of organized business men. This is an aspect of the chamber's activities worthy of emphasis because of their part in legislation.

The chambers aid in building up systematically a volume of opinion behind a measure. A bill is considered with some care by the legislative committee. A report is made to the main body, voted upon, and frequently accepted unanimously or by a very large majority. Then this matter is passed along to another chamber of commerce, and the same procedure follows. The efficacy of this is cumulative, and perhaps persuasive: a measure received already bearing the endorsement of important chambers of commerce is not likely to be turned down without very good reason. Big cities influence their smaller neighbors. This is suggestive: "Les chambres de commerce de Libourne et Carcassonne ont fait connaître qu'elles avaient adopté le voeu de la chambre de commerce de Lyon."[12] Nor do chambers limit themselves to reporting to their confreres. They communicate with the prime minister, and with the minister of finance or of commerce and industry, or with "MM. les députés membres de la commission du commerce et de l'industrie." Projects go the rounds, and after being considered by one chamber after another, reports are made to the government. A consensus of opinion develops under the eyes of the government and under the surveillance of the parties that will be affected by the outcome of the matter at issue. The ministry turns to the chambers for advice, in order to sound them out. There is sometimes suggestion from the top down, the ministers presenting measures for consideration.

The efforts to organize industry do not cease with the chambers. There are the numerous private organizations of employers and of employees. There is also the National Economic Council,[13] made up of representatives of various forces in commerce and in industry. Its purpose is to represent the general economic life of the nation. Official bodies with more specialized fields of jurisdiction are also found.[14]

[12] *Compte Rendu des Travaux de la Chambre de Commerce de Lyon* (1927), p. 353. Similar evidence is scattered throughout; see pp. 370, 378.

[13] Edith Bramhall, "The National Economic Council in France," in this *Review*, August, 1926.

[14] C. Paulte, *Chambres consultatives. Conseil supérieur du Commerce et de l'Industrie* (1886).

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There are at present consultative chambers of arts and manufactures in twenty-eight departments; in some there are more than one, which brings the total number up to fifty-five. But it must be remembered that some of these organizations are entirely devoid of vitality; indeed, in many instances, they are defunct.[15] A law passed in 1924 authorizes departmental chambers of agriculture and provides that regional chambers with purely consultative functions may be established.[16] Under its terms, farmers have a right to undertake elaborate coöperative enterprises.

The existence of the *conseil supérieur du travail* must also be noted. It is composed of delegates from employers' associations and from labor unions, as well as certain governmental officials. It functions in a consultative capacity in conjunction with the ministries of labor and commerce. A great variety of advising committees and special consultative institutions are to be found in France.[17]

It is in connection with the administrative bureaus that these agencies are of most importance. It is the bureau that turns to the council or chamber for advice, whether upon a bill pending in the legislature, or whether with regard to contemplated executive action. And because of the relatively wide powers exercised by the executive, as contrasted with the legislative, side of the French government, it is essential to have agencies representing private interests that are officially instituted and that possess the right to be consulted. The chamber of commerce at Rouen[18] writes a letter of protest to *M. le Chef d'Arrondissement des Chemins de Fer de l'État* urging that the railway office be conveniently located, and again a letter to the director-general of the railroads at Paris asking that their school children be not inconvenienced by an intended change in the train schedule. When it is possible for distant administrative authorities to interfere thus intimately in the life of a community, it is certainly essential that the community have at hand agencies through which to protest. This is the more or less nega-

[15] H. Berthélemy, *Traité élémentaire de Droit Administratif* (Paris, 1926), p. 857.

[16] Assemblée des Présidents des Chambres d'Agriculture de France. Séance des 19-20 Mars, 1929 (Grenoble, 1929).

[17] See Charles W. Pipkin, *Social Politics and Modern Democracies* (N.Y., 1931), II, Chap. 3, for an excellent survey of such bodies.

[18] *Bulletin Bimestriel de la Chambre de Commerce de Rouen*, Nov.-Dec., 1929, p. 463.

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tive aspect of the problem, and is brought about by the peculiar degree of centralization in France.

On the positive side, the chambers are found submitting laws and suggesting executive actions. They furnish their members a forum for the effective discussion of questions concerning their group welfare, and incidentally that of a wider public. The chambers take the attitude that they are particularly well qualified to pass upon all legislation relating to commerce and industry, and especially to labor, tariffs, and transportation rates. They point out that so closely are their interests bound up with the national prosperity that all proposed economic legislation risks failure if the chambers are not consulted. They query: "Who are in a better position than the members of the chambers of commerce to point out the conditions under which improvements may best be made without adversely affecting important interests?" Recruited in large measure from the prosperous middle class, the chambers take the view that their welfare is bound up with the great economic interests of the country. They feel that they are well qualified to speak for industry and commerce.[19]

One hesitates to accept the chambers at their own evaluation of their significance as representative bodies. They do serve often as useful buffers between officials and citizens; they act as critics and advisers to administrative authorities and to the legislature. Georges Guillaumot writes: "Les chambres de commerce sont les conseillers ordinaires de gouvernement, et parfois le législateur lui-même ne dédaigne pas de faire appel à leurs lumières."[20] Moreover, the recognition of such chambers provides a means whereby the government may directly profit by the specialized knowledge of an important body of citizens. These agencies were, of course, not created with the avowed intention of bringing about a devolution of political authority or a surrender of functions into the hands of outsiders. The original intent was probably rather to utilize certain economic forces of the nation for the enhancement of political power. Yet today the chambers are useful for other purposes; and they may well become more so as the complexities of administration and the technicalities of legislation multiply.

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[19] *Annuaire des Chambres de Commerce*, p. xix.
[20] *Op. cit.*, p. 6.

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Reorganization of the Governmental Structure of Roumania.[1] The law for the reorganization of central administration and the law on local administration (July 20, 1929) sponsored by the National Peasant government of Roumania have recently been put into effect. Both measures were drafted by Professors Negulescu, of the University of Bucharest, and Alexianu, of the University of Cernauţi. Their adoption comprises one of the most thorough governmental reforms in the history of the Balkans.

The structure of the Roumanian government was, until very recently, almost completely copied from the French system. Roumania was a typical example of a unitary organization. The whole power of government was centralized in Bucharest. Practically all powers of local government were derived from the central authority, and were enlarged and contracted at the will of Bucharest. The whole system lent itself admirably to the domination of the National Liberal party, guided up to 1927 by Ion I. C. Brătianu, and after his death by his brother, Vintilă I. C. Brătianu, who died last year.

Since the strength of the National Peasant party, which assumed the reins in 1928, lies largely in the provinces acquired at the close of the World War, a decentralization of government was to be expected. The bitter resentment of Maniu and his associates toward the over-centralization which favored the policies of the Brătianus forced the recent overhauling of the governmental structure, tending toward federalism—a form which takes cognizance of the differences of the past and present between the old kingdom and the new provinces and attempts to extend democratic features of self-rule to the electorate. At the same time, it attempts to secure bureaucratic expertness.

The economic depression of Roumania undoubtedly was one of the factors which determined the ultimate reduction of the number of the ministries. The ministry of health was merged with the ministry of labor, that of public works with the ministry of communications, and the ministry of religion with that of education. The ministries for Transylvania, Bessarabia, and Bukovina were abolished.[2]

[1] The information presented in this article was secured by the writer during a recent visit to Roumania. Most of it was provided by Mr. Filotti, director of the press bureau of the Presidium of Ministries. Some details can be found in R. A. Egger, "Administrative Reorganization in Roumania," *National Municipal Review*, October, 1930, pp. 724-725, and D. Mitrany, "Democracy in the Villages, *Manchester Guardian*, November 28, 1929, p. 17.

[2] There are now ten ministries, viz., interior, foreign affairs, finance, justice,

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A bureau of the budget, attached to the ministry of finance, was created. A presidency of the council of ministers was also added, charged with coördinating the activities of all ministries under the premier. The press bureau and bureau of information were transferred from the foreign ministry to the presidency, and its director became one of the most important functionaries of the cabinet. The powers and duties of the bureaus were defined more exactly and somewhat simplified, especially with a view to eliminating duplication of both functions and functionaries. Additional supervision was provided for the public functionaries with the formation of a permanent disciplinary commission, also attached to the presidency of the council.

For the realization of administrative decentralization, seven provincial directorates were created: (1) for Muntenia (old Wallachia) at Bucharest; (2) for Bukovina at Cernauți; (3) for Bessarabia at Chisinău; (4) for Transylvania at Cluj; (5) for Oltenia at Craiova; (6) for Moldavia at Iași; (7) for the Banat at Timișoara. Each of these is governed by a ministerial director, having the rank of undersecretary of state; and each comprises seven departments corresponding, in general, to the ministries of the interior, finance, education and cults, agriculture and domains, public works and communications, industry and commerce, and labor, health, and social welfare.

Even more drastic reforms were applied to the local administrative system. The smallest administrative unit recognized by law is the commune. The rural commune is considered as an association of villages; but each village has its own administrative machinery. Several communes form a district (county). There are urban communes (towns and municipalities) and rural communes—14,744 in all, of which 16 are municipalities, 154 urban communes, 116 suburban, 4,802 rural (having village councils), and 9,387 small administrative units. Municipalities do not form an integral part of the county in which they are situated, but are granted county status. The rural communes must have a minimum of 10,000 inhabitants.

The administration of a rural commune is carried on by the communal council. The mayor is chairman, and, together with a committee of this body, he forms the executive organ of the council. The mayor is elected; and the village mayors act automatically as his deputies in

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education and cults, war, agriculture and domains, industry and commerce, public works, and labor, health, and social welfare.

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all matters concerning their particular villages. The urban commune has as its deliberative body an urban council or a municipal council, and as its executive organs, a mayor, his deputy, and the committee of the communal council or the municipal council, the latter being formed of elected members and members by right. The mayor is chosen from the elected members, and by the whole council.

The administrative unit of the second degree is the county (department), composed of communes, but divided into several sectors. The municipalities do not form counties, but are considered as of the same administrative rank. The whole country is divided into 72 counties administered by county councils elected by universal and secret vote, i.e., the same manner as the communal councils. The executive body of the county council is a permanent committee composed of four of the councillors, the chairman of this committee being the county's administrative head. Several counties of the same directorate can unite in a voluntary association, with a council formed from the delegates of the associated counties and of the urban boroughs.

The chief point of interest is that the prefect has only the powers of general oversight and surveillance; although it is significant that the police power remains in his hands. The organ that exercises the administrative tutelage and control is the central committee of revision, which has power to revise and reform any abusive acts and illegalities of the local authorities in their entirety.

The elected delegation of the county councils and municipalities, together with the heads of local ministerial services connected with the directorates, forms an administrative council (the ministerial directorate) which coördinates the entire administrative activity of the territory. Here, therefore, the delegates of elected bodies, coming up from the villages, meet with the representatives of the central government. The attempt is to combine the virtues of bureaucratic administration with some responsibility to the popular will, based on consultation.

The reorganization has been opposed violently by the Liberals,[3] who argued, especially, that it is unconstitutional, in view of the fact that the constitution of the kingdom proclaims the country "a national state, united and indivisible." Its success cannot as yet be appraised, partly because of recent cabinet changes; and the Liberals are sworn

[3] The party committee, however, split on the question. I. G. Duca considered it a premature step to oppose the reform, and the absence of Argetoianu from the Senate when the declaration was read was significant. Averescu's followers ranged themselves with the opposition.

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to abolish it upon their return to power. But the effort to reorganize the structure of the government in accordance with approved principles of administration is interesting to the student of comparative government—the more so because it has been made in a country where no tendency toward de-bureaucratization and devolution of the power of the central government has heretofore been manifest.

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National and International Control of Foreign Investments. In the course of the last eight years, economists and political scientists in the United States have become increasingly aware of problems created by government influence on private foreign investments. For an understanding of these problems, they have turned to an analysis of the experiences of England, France, and Germany before the World War and of the United States since.[1] But little attention has been given to the implications of control of foreign investments for international organization. It is the purpose of this paper (1) to summarize the nature of the control in each country; (2) to outline the theory underlying government control; (3) to point to the international effects of this control; and (4) to propose certain changes which are necessary to bring this aspect of state policy into line with recent developments of international organization.

In a sense, it is inaccurate to speak of government control in England, because the influence exerted by the government there was not in the nature of regulation. The relationship between government and bankers was one as different from legal control as is the theory of the common law from that of the civil law. That is to say, there was no statute on the basis of which the government influenced the outward flow of capital. Such relationship as there was, such similarity of policy as existed between finance and government, depended upon the existence of an accord which was the result of a common heritage and a common purpose. As Feis suggests,[2] the structure of British society was such as to bring into political office, and therefore into positions of control, men whose conceptions of world or empire policy were the same as those of the leaders of British finance. Their social, political, and economic outlook sprang from the same background. It was not in England, as it was in France, and during the early period in Germany, a question of government policy vs. private policy. The interests of these two groups were essentially the same. Questions of state and loan policy

[1] H. Feis, *Europe; the World's Banker, 1870-1914* (New Haven, 1930); J. Viner, "International Finance and Balance of Power Diplomacy, 1880-1914," *Southwestern Political and Social Science Quarterly*, IX, 1, and "Political Aspects of International Finance," *Journal of Business*, I, 141; B. Williams, "Capital Embargoes," *Political Science Quarterly*, June, 1928; W. H. C. Laves, "German Governmental Influence on Foreign Investments, 1871-1915," *ibid.*, Dec., 1928; and L. H. Jenks, *Migration of British Capital to 1875* (New York, 1927).

[2] Feis, *op. cit.*, p. 83 ff., from which this summary is largely taken.

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were discussed at chance meetings by those directly affected. This does not mean, of course, that differences of opinion did not exist, nor that the government did not formerly provide means of influencing at certain times the direction of the flow of British capital. On the contrary, there were many instances in which government policy ran counter to the interests of specific bankers, and where, therefore, the strength of the respective groups was tested. And there were means, such as the changing of the discount rate or the favoring of certain securities by the Bank of England, or the Colonial Stocks Act, or inspired newspaper articles, through which the government could directly influence the flow of capital. But, surveying the history of English government policy in this respect, one must be impressed by the prevalence of coöperation rather than control.

As brought out in the most recent analysis of the French policy,[3] the government in France, from the seventeenth century onwards, controlled all legitimate public trading in securities. Since the creation of a company of stock-brokers, the origin of the Coulisse, and the expansion of regular banking into the field of security trading, the government has continually asserted its prerogative of supervising all trade in foreign securities. And from the earliest days this control has been exercised by the minister of finance, more recently by this officer with the advice of the minister of foreign affairs. This has meant that in the historic policy of the French government was imbedded a belief in the legitimacy of government supervision, and it is therefore not surprising that, as the policies of state became more significant internationally, the political implications of foreign loans came more prominently into view, with the result that foreign loans became instruments of national policy.[4] Under the terms of the acts and decrees, economic reasons could easily be used as the basis for political intervention; and the effects of this policy are now well known.

A similar survey of the German situation necessitates an appreciation of the nature of pre-war social and political forces in that country. Speaking in terms of these forces, German pre-war history must be divided into two periods. When Germany first emerged as a unified nation, the controlling government groups were the landed aristocracy and conservatives of the sympathies of Bismarck. But when Germany

[3] Feis, *op. cit.*, p. 118.

[4] "Above and beyond all other considerations which induced French official intervention with the movement of French capital abroad was the wish to make investments serve the political purposes of the state." Feis, *op. cit.*, p. 133.

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began her overseas expansion in earnest, and when German capital became one of the compelling forces in international rivalry, the commercial, banking, and industrial interests began more effectually to influence state policy. This new group found sympathetic support in William II, and this second period thus emerges after his advent to the throne.

Due to the influence of the then dominant group, the early period is one in which overseas expansion, either through colonization or through foreign investing, was generally not favored. It was a period of Kontinental- rather than Welt-Politik, and one in which the need for the solidifying of the Reich structure loomed large in the minds of leaders. Success for the new nation, both internally and externally, depended upon the strength of Germany as against foreign powers. But to avoid undue friction with his neighbors, Bismarck held strictly to the principle that they should be given a free hand abroad, and that no German interests should cause international conflict.[5] Many who supported the Iron Chancellor further opposed foreign expansion because it was feared that the outward flow of capital would adversely affect agricultural credits,[6] and would involve increased expense, and hence higher taxes, to give the protection which would inevitably be demanded. Thus, during the early period the controlling party was insistent that finance should follow the national and international interests of the state. And for this reason control was exerted.

In the second period, two similar forces were at work in the opposite direction. With the advent of William II, Germany embarked upon a policy of political expansion,[7] and any effort of private finance or enter-

[5] See, for example, Bismarck's Reichstag speech of Dec. 5, 1876, in which he said of German interest in Near Eastern affairs: "I shall not recommend an active participation of Germany in Oriental affairs as long as I fail to see in the entire affair any German interest which is worth the bones of even a single Pomeranian grenadier." K. Helfferich, *Georg von Siemens* (Berlin, 1923), Vol. III, p. 16. As late as 1888, Bismarck wrote on a Foreign Office document: "In those matters it will be our problem to let the rivalries of France and England continue just as in Egypt. England's anti-French interests are beneficial to us." Helfferich, *op. cit.*, III, p. 28.

[6] Cf. Kaiser Wilhelm II, *Ereignisse u. Gestalten 1878-1918* (Berlin, 1922), p. 45; Oscar Meyer, *Die Boerse* (*Berlin*, 1907), p. 3 ff; A. Nussbaum, *Kommentar zum Boersengesetz* (Muenchen, 1910), for the influence of the agrarians in drafting the stock exchange law; "Kapitalanlagen im Auslande und Agrarpolitik," *Deutsche Wirtshaftszeitung*, 1914.

[7] Cf. Mary E. Townsend, *The Rise and Fall of Germany's Colonial Empire, 1884-1918* (New York, 1930), Chap. 7.

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prise to further this movement was gladly supported. At the same time, German industry was developing by leaps and bounds, and the inevitable growth in power of industry and finance was making itself felt in government circles.[8] Gradually, men of commerce became the invited guests of the Court, where in an earlier day a legal bureaucracy had held sway. State policy and private plans thus tended to follow a common path. Control gradually gave way to informal advice, as each group became more dependent upon the other.

Any division of history into rigid periods is dangerous, but these broad lines seem apparent. There were instances of coöperation in the earlier period, as there were many instances which showed a total absence of coöperation in the later. Especially is it true that there were years of strife and ill feeling between William II and the leaders of finance where the *quid pro quo* which makes coöperation possible was not evident to either party.[9] In these instances the government attempted to enforce its will through its control of the Reichsbank, indirectly through the stock exchanges and through diplomatic pressure or through newspaper articles,[10] and the banks had always the possibility of investing through exchanges in foreign countries.[11] But in spite of these exceptions, in both periods the general transition from control to coöperation is clear.

The policy of the United States toward foreign investments can be reviewed briefly.[12] During the period preceding the World War, the government suggested on several occasions that there were circumstances under which it would assume a right to pass on the wisdom of loans. Shortly after the war, when the United States emerged as the largest creditor of the world, the Department of State published an announcement of general policy. While not demanding that all proposed foreign loans be submitted for approval to the government, it nevertheless suggested the advisability of the maintenance of contact between bankers and the Department of State. It is well to emphasize here that, whatever the extent of control, it is definitely on an informal basis, and is similar to that existing in England prior to the war.

[8] K. Helfferich, *op. cit.*, III, 224 ff; B. Huldermann, *Albert Ballin* (Berlin, 1922), p. 280 ff.

[9] W. H. C. Laves, *op. cit.*, pp. 506, 508. See also the pressure brought to bear upon the Deutsche Bank in the Bagdad Railway negotiations. Helfferich, *op. cit.*, 58-62 and 78-84.

[10] W. H. C. Laves, *op. cit.*, p. 502 ff.

[11] *Ibid.*, p. 508.

[12] Summarized from current newspapers and from B. Williams, *op. cit.*

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In all four countries whose control has been reviewed, there developed a marked tendency for high finance and foreign policy to pursue the same international ends.[13] What is most significant for our study, however, is that this unity of purpose was born of a realization that mutual aid was not only advisable but necessary. Either because of an original similarity of outlook, as in England, or because of a gradual growth of this similarity as the result of practical experience, as in other countries, these two major forces of international politics learned that mutual aid and coöperation were the only means in present-day political organization through which each could attain the desired ends. Further, each became aware that it was dependent upon the help of the other. As governments at times needed the pressure of finance to assure the success of a diplomatic policy, so finance in numerous cases needed diplomatic intervention to secure concessions or to protect investments.

We have summarized the nature of the control exerted and of the situation which made it possible and necessary. We may next briefly inquire into the theory which made this control appear a legitimate function of the government. As has already been suggested, government influence on foreign investments has taken two general forms: government efforts to make loans conform to national policy, and diplomatic assistance to investors in gaining a foothold abroad or in protecting investments already established. Both forms derive from a nationalistic conception of government function. The effort to impose an obligation upon investors would seem to be based on a belief that the community of interest within a national state is so great that each member of a state must conform to the interest of all. That, of course, is the basis of the sanctions behind all law. It is true that any effort in the United States to control foreign investments by statute would meet with violent opposition. But it is believed that the difficulty of enforcement and the question of policy, rather than the legitimacy of such legal control, is the chief obstacle to the enactment of such a statute. The attainment of the same end through extra-legal means in England, Germany, and the United States is simply an illustration of the fact that not alone through coercion but also through coöperation can state policy be carried out.

The obligation, in turn, which rests upon the state to aid the investor rests upon a similar belief in national unity. It has been bril-

[13] See especially J. Viner, "International Finance and Balance of Power Diplomacy," *loc. cit.*

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liantly analyzed on the basis of European imperialism in Africa by Leonard S. Woolf. He states it thus: "That the true sphere of policy is to use the power and organization of the state upon the world outside the state for the economic ends of the world within the state."[14] While the economic aspects have been emphasized by Woolf in his study, it is apparent that the same general concept has been incorporated in the laws of many states and in international law[15] governing the protection of citizens abroad. It is the basis, e.g., of the policy of Great Britain[16] and the United States,[17] and is incorporated in the German constitution of 1919.[18] Both forms of government influence on foreign investments thus appear to derive from a philosophy which is nationalistic, and which sees the state as the highest unit of political organization.

What have been the international effects of this purely national policy? It is not within the scope of this paper to attempt a comprehensive analysis of all of them; but attention may be called to three: the effect upon relations between major powers, between major and minor powers, and upon naval armament propaganda.

In making investments conform to state policy, the primary effect has been to intensify to a very marked degree the feeling of rivalry and ill will between the major powers. For such capital as a nation had within its borders was looked upon as a purely national asset. Thus a portion of the world's economic resources was made to conform to diplomatic plans, and was not always permitted to flow where it most naturally would have gone. The situation has a direct parallel in the efforts of nations to exercise exclusive control over natural resources in order to bring about national self-sufficiency. The effects upon international relations and friendships in this case are patent. Control of large portions of desired capital has inflated the sense of national power in the creditor nations, while it has caused ill feeling on the part of the

[14] *Empire and Commerce in Africa* (London, no date), p. 16.

[15] "The state has, however, in international law, a right as against other states to protect its citizens abroad." E. M. Borchard, *The Diplomatic Protection of Citizens Abroad* (New York, 1916), p. 29.

[16] Cf. Sir Edward Grey in House of Commons, July 10, 1914 (cited by Feis, *op. cit.*, p. 97.)

[17] Slaughter House Cases, 16 Wall. 36, 79, 80, cited in Moore, *Digest of International Law*, Vol. VI, p. 248.

[18] "Dem Ausland gegenueber haben alle Reichsangehoerigen innerund auszerhalb des Reichsgebietes Anspruch auf den Schutz des Reiches." Art. 112, Par. 2. Quoted in G. Lippert, *Handbuch des Internationalen Finanzrechts* (Vienna, 1928), p. 124.

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debtors. And this, in turn, has been reflected in international alliances which themselves are evidences of fear and unrest. The classic example of the effect of national control of capital on such alliances is the shift from Russo-German and Italo-French to Franco-Russian and Italo-German friendships in the latter part of the nineteenth century.[19] It is not here contended that the control of finance alone caused these realignments, but merely that it served to intensify them. The situation is again similar to those created by efforts to establish national monopolies of raw materials or to maintain "closed doors" in colonial and backward areas.

With regard to government aid to investors, a few of the results may also be suggested. Through the interference of governments in the competition of private investors, either to secure concessions or to protect those already possessed, disputes between citizens of different nations have become public disputes between major powers. The effects of this are only too well known in pre-war Turkey, China, Persia, and Morocco. For those familiar with the tangles of pre-war diplomacy, the mere mention of these areas of conflict will recall to mind their direct bearing upon the origins of the World War.

Under the influence of this policy, too, the relations of major powers with minor debtor countries have become strained. The latter have come to consider any intervention by the government of a private creditor as an effort to effect control, i.e., as an indication of imperialistic intent. For the alleged right of the citizen to the support of his government has led to indiscriminate intervention. The history of the United States in the Caribbean is here pertinent. The practically assured government aid in case of default has, in turn, made creditors less careful in analyzing the capacity for repayment on the part of potential debtors. And under the influence of high pressure salesmanship, backward countries have been encouraged to over-borrow, with the almost inevitable result of political upheaval and intervention.[20]

Finally, the history of some of the major powers seems to illustrate that the policy of aiding investors abroad has formed a phase of a very dangerous type of "big navy" propaganda. Proponents of larger navies have tried to enlarge appropriations for this type of defense on the reasoning that far-flung economic empires necessitate the extension

[19] W. H. C. Laves, *op. cit.*, p. 501, and Feis, *op. cit.*, Chaps. 9 and 10.

[20] See the series of articles by Lawrence Dennis in *The New Republic*, beginning with the issue of Nov. 19, 1930.

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of the protective arm of the government because every citizen is entitled to full protection abroad. But meantime they have encouraged investors to go abroad on the ground that, because of the navy, they would be as safe there as at home. This is well brought out in a recent publication of the Office of Naval Intelligence of the U. S. Navy;[21] and equally revealing propaganda may be found in two publications of the German ministry of marine before the World War.[22]

The past and present policy of control over foreign investments has been based on a purely national concept, both of the function of the state and of the nature of capital. Its effect has been to reinforce the national state as an end in itself, even at the expense of intensifying international ill-will. This, in the light of modern history, has meant that national control over capital has been one of the underlying causes of war. It has meant that the rivalry and ill-feeling caused by it have been among the factors necessitating the establishment of means for the adjustment of international disputes. In accordance with the modern efforts to prevent wars by removing their causes, as well as by establishing means of adjusting disputes, this purely national control must give way to some form of international control. It appears incongruous that in a world which has experienced the ruining of lives, property, and institutions in the recent World War, which is coming to recognize colonial empires and backward areas abundant in natural resources as trusts of mankind under the mandate system, which has created a League of Nations for the adjustment and a World Court for the adjudication of disputes, and which becomes increasingly aware of the economic and political interdependence of its members—it is incongruous that such a world should consider capital as a purely national asset and an instrument of national aggrandizement.

The present situation is likely to continue so long as no other means is available for securing the ends desired by the individual investor and his national government, respectively. So long as the individual investor must depend upon his national government to secure his investment by diplomatic support, so long as each national government is compelled, by the force of financial rivalry of other powers, to re-

[21] "The United States Navy as an Industrial Asset," published by the Office of Naval Intelligence (Washington, 1924).

[22] Reichs Marine Amt, "Die deutschen Kapitalanlagen in ueberseeischen Laendern" (Berlin, 1900); "Entwickelung der deutschen Ueberseeinteressen in letzten Jahrzehnt" (Berlin, 1905).

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gard the investments of its citizens as necessary diplomatic weapons, just so long must the present system continue. On the other hand, it is reasonable to expect that as soon as some form of international organization can guarantee to the individual citizen the security of his investment and the elimination of capital as an instrument of diplomatic pressure, the investor will be willing to forego the right to diplomatic protection, and the national government will be willing to relinquish its hold on the export of capital. Once established upon this basis, such an international financial organization would be in a position adequately to care for the interests of the debtor nation and the world order as a whole, just as the mandate system today attempts to look after the welfare of native populations and international well-being.

Specific proposals are beyond the scope of this discussion. But the experience of the world in reconstructing the post-war finances of Austria and Hungary, and in establishing the Bank of International Settlements, might suggest methods for the creation of a necessary institution. In the course of the last few months, repeated rumors have been heard as to plans for new international banks. Mr. Montagu Norman, of the Bank of England, suggested toward the end of April that a new international bank might do much toward equalizing the supply of free capital in the world. More recently, a committee of the Bank of International Settlements has proposed the expansion of this institution's activities to facilitate the mobilization of long-term credits. In none of the recent proposals has there been mention of granting the banks such political powers as has been here suggested. But if one of these banks were to be established, it would aid in creating a more centralized system of control in international finance, and a great step would have been taken toward bringing order out of a perplexing and chaotic situation.

It is obvious that the power vested in such an institution would need to be carefully circumscribed. For control over the capital of the world would be tantamount to control over the economic life of the world. However, such institutions of control evolve in the course of their history, and it appears that even though there would be reluctance to permit such supervision with respect to loans to major powers, the time has arrived for some international supervision of loans to smaller powers. At the present juncture, such supervision might advantageously include the establishment of an international board to examine both the purpose and the terms of loans in order to prevent excessive

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and unproductive financing, as well as to act as a receiver to devise practical and just remedies in the event of default.

WALTER H. C. LAVES.

Hamilton College.

The Concept of "International Government." There was recently published in the pages of this *Review* an article from the pen of Professor William E. Rappard, entitled "The Beginnings of International Government,"[1] in which the author took issue with the use of that phrase and challenged the validity of the concept to which it refers. He took as his text, more or less, a volume published in the United States some years back which employed the contested phrase in its title. And he concluded that the term is a misnomer, and that the phenomenon referred to does not—in the possible alternative sense of supernational government—exist today to any appreciable extent.

There has subsequently appeared another volume carrying the neat title "International Government;" and another volume with somewhat the same designation is promised shortly. Some ten years ago, the writer of the present comment, in composing a similar work, was compelled to face the problems of theory and of verbal expression here involved, and decided in favor of "International Organization." To that he has adhered in subsequent editions, with ample reference to the functional side of international government ("procedure," "coöperation"), but, as originally, for reasons not involving a denial of the validity of the contested concept. He would like to discuss briefly the criticism of the idea of "international government" offered in his accustomed brilliant and trenchant style by Professor Rappard.

The main difficulty lies not so much in accepting the definition of government adopted by Professor Rappard (orderly exercise of authority); but that is the first point at which the writer would take issue. It seems to him clear that *exercise of control* by one person or group of persons over another is the essence of government, whether or not that control be exercised according to any system of law, or even any system of order. One need cite in support only such elementary considerations as the facts that (1) in any system of civilized constitutional government there are infinite elements of confusion and contradiction in fact, and (2) if it is only a *purpose* of order or system that is demanded, the dictator has at least his own plan of personal

[1] November, 1930, p. 1001.

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benefit, and may even have in mind a plan of public welfare. But accepting this less exacting definition would not make it much easier to discover international government unless the domination exercised by the great powers, singly or collectively, over weaker powers, is regarded in that light (the writer should so regard it, but it is too rare or vague to serve as a very important example); hence it does not seem necessary to pause longer on this point.

It is with the analysis of international government in paragraph 2 on page 1002 in Professor Rappard's article, and the failure to consider another possible concept of international government, that the writer wishes respectfully to disagree. Given the analysis of the idea in that paragraph (government by two or more nations or government of two or more nations), then much of what follows is obviously sound, except that (1) the two cases (government *of* or government *by* two or more nations) are not necessarily distinct (2) government *of* and *by* two or more nations is not (it seems) as rare as is suggested, and (3) the summary exclusion of interstate federations from all consideration (top of page 1003, end of first complete paragraph) seems a bit hasty, especially such pluri-national unions as Switzerland and the British Empire (one might also recall Dr. James Brown Scott's *The United States of America; A Study in International Organization*).

It seems that the phrase "international government" is, for various reasons, definitely preferable to "world government." "World government" would logically mean government of the world of humanity as a unit, or at least government of the world of nations and their peoples as a unit. That is conceivable, and even imminent, to a certain degree; indeed it is an actual fact in certain very limited items, as will appear shortly. But it seems to be a too pretentious term as yet. Just as the term "international government" seemed, twelve years ago, if not still today, to constitute a quantitative exaggeration, so the phrase "world government" seems today to constitute an exaggeration, not because that sort of thing is not possible, or does not exist in some instances or some degree, but because it is so rare.

It seems clear, to be precise, that "international government" must refer in essence to the exercise of control across national boundaries, territorial or juridical. Where one nation exercises authority over another nation, or over the nationals of the second nation, or where a nation exercises authority over its own nationals within what is normally the field of authority of another nation, we have international exercise of authority, i.e., international government. And of course

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there may be two or more nations or nationals involved in any such case.

We may leave out of account the exercise of authority by one nation over its nationals within the jurisdiction of another, which is a commonplace and may not seem properly to constitute international government. Do we have any cases of exercise of authority by one nation over a second nation or its nationals? Plenty of them. Whenever two or more nations by agreement establish requirements which from that time on are to bind them or their nationals, we have one nation exercising such authority toward the second. Is this to be denied? Suppose one nation adopted those requirements for itself; it could at any time abandon them. But when they are adopted by international action, they cannot, in general, be abandoned except by the same type of action. Evidently the participation of the second state, by agreement with the first, constitutes an added element of binding authority which distinguishes international government from national self-government. State A submits to the authority of State B in exchange for B submitting to A. Even if we hold that it is a case of A doing something itself, or to itself, in exchange for B doing something itself, or to itself, we find that both are, from the moment of setting up the arrangement, compelled to do those things by the action of the other and the juristic authority which that action exercises.

Where the above action takes the form of a bilateral agreement merely, with application or administration left to the individual nations, this theoretical analysis does not, perhaps, seem to mean very much, from a practical point of view. But where forty nations agree to some requirement, and entrust application of the agreement to an administrative organ, it seems that the manifestation of international government is clear and impressive. And we have many such cases, of course, including activities within the League in numerous items. Where we have agreement among all the nations of the world, binding themselves and controlling themselves in some matter, we already have, it might be supposed, world government.

Surely the statements contained in the fourth complete paragraph on page 1003 are somewhat exaggerated. Even if the politicians, journalists, and professors were to deny that their country was governed by any other nation or nations, we should certainly be compelled, in view of the analysis given above, to dismiss such denials as ill-informed or deliberate rhetorical misrepresentation designed to fool the people—and their own selves to some extent. But in point of fact, the ad-

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mission, if "admission" it is, that the nation is bound—the term "governed" is actually often used—by a treaty or an international arrangement, legal and administrative, is frequently made today in parliamentary debate and public speech. Of course the idea of being "governed," or "bound," by a treaty is a euphemism or an ellipsis; documents do not possess or exercise any juristic authority, and it is the parties thereto, or their joint actions, which bind, control, or govern one another. It seems beyond dispute that the nations members of the League are mutually governed by one another—governors and governed, governing and being governed by one another—in their actions in the League wherever binding arrangements are set up and applied. And it seems that they have clearly and expressly recognized this many times in the past decade.

This would mean that the real problem is a quantitative one. We have, and it is widely admitted that we have, international government as such. But how much of it? Plenty to prove its existence, but, in contrast to the total possible field, relatively little. That is, the number of items with regard to which this process has been set up is relatively small. But it is growing, and the question which is raised in the first complete paragraph of page 1004 is raised, or will be raised, with the quantitative increase of international government. The principle of national sovereignity is not violated by the establishment of international government as such, provided that step is taken by voluntary agreement; and all the thousands of treaties concluded in modern times are regarded as leaving sovereignty untouched. But if a nation should sign away too many items of governmental authority it would cease to be a nation, and would place itself in such a position that other nations would refuse to continue to recognize it as such, which, it would seem, is the practical, and even the theoretically sound, test to apply. New York is in that position, but for quantitative, not qualitative, reasons, so to speak. And if all the nations signed away to one another, i.e., to a federal administration, most of their powers of government, let us say, then they would, in their own eyes and in one another's opinion, cease to be nations, not as a result of any violation of their sovereignty but by its voluntary surrender. Until such a point is reached, when world government would truly come to exist, such exercise of authority as we have across national lines—and there is a great deal of it already —is international government.

To sum up: international government consists in the control of one nation or its nationals by another, arbitrarily or in accordance with law

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binding upon, because accepted by, both; this is possible in spite of the doctrine of national sovereignty, because that doctrine permits original agreements between and among nations which will thereafter constitute governing controls over the participants, whether administered by the individual nations themselves and their agents or (less frequently) by agents acting on joint mandate of the nations. Of this sort of international government, we have many examples today, although the possible range of international government is very incompletely covered—for reasons very realistically brought out by Professor Rappard.

PITMAN B. POTTER.

University of Wisconsin.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The twenty-seventh annual meeting of the American Political Science Association will be held at Washington, D.C., December 28-30. Other organizations meeting at the same time and place include the American Economic Association, the American Sociological Society, the American Statistical Association, and the American Association for Labor Legislation. The headquarters of the American Political Science Association will be at the Mayflower Hotel. The program, as thus far arranged, is outlined by the chairman of the program committee, Professor John M. Gaus, of the University of Wisconsin, as follows: Round table meetings will be held on Monday and Tuesday mornings, December 28 and 29, at 10 A.M. Wednesday morning will be kept open for a third meeting of the round tables, or of special groups drawn from their membership, if the chairmen and members desire to hold further meetings. The round tables and their chairmen include: (1) International Relations, Charles P. Howland; (2) Local Government, Ernest Griffith; (3) Judicial Administration, Raymond Moley; (4) Political Parties, Louise Overacker; (5) Government and Education, Earl Crecraft; and (6) Comparative Central Government, Frederick F. Blachly. There will be section meetings on Monday and Wednesday afternoons. The sections, with their chairmen, are as follows: On Monday afternoon at 3:00, Legislation, John A. Lapp; Public Opinion, William Casey; Political Theory, Robert T. Crane; Teaching the General Course in Political Science, Harold R. Bruce; and on Wednesday afternoon at 2:30, Public Administration, Edwin A. Cottrell; and Public Law, Charles G. Haines. A joint meeting with the American Economic Association on the topic of American investments and policy in the Caribbean is being arranged for Tuesday afternoon. It is possible that one or two of the section meetings will be joint meetings with other associations. A new feature is a luncheon Monday noon at which there will be a discussion of contemporary political developments in a region of the United States. The region selected is the South; and Professor R. K. Gooch, of the University of Virginia, is in charge of preparations. On Tuesday, December 29, there will be a luncheon meeting at which probably certain committee reports will be presented. The annual business meeting will be held at 4:30 on the same day, and the presidential address will be presented that evening.

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Professor Robert T. Crane, of the University of Michigan, has been granted an extended leave of absence in order to accept the permanent secretaryship of the Social Science Research Council, in succession to Mr. Robert S. Lynd.

Professor Charles E. Merriam, of the University of Chicago, has been made a member of the executive committee of Mayor Cermak's advisory committee, a group which will act as a general planning agency in the reorganization of Chicago city government.

Professor Leonard D. White, of the University of Chicago, has been appointed to membership in the Chicago civil service commission. He will continue his work at the University, but will sever various other connections.

Dr. Tyler Dennett, historical adviser to the Department of State and former editor and chief of its division of publications, will go to Princeton University as professor of international relations in the School of Public and International Affairs. The appointment is effective in February, 1932.

Dr. Harwood L. Childs, professor of political science at Bucknell University, has been appointed associate professor of politics at Princeton University. Dr. Childs will give instruction in political psychology and public opinion. He will go to Princeton in the fall of 1932, after spending the coming academic year in a study of public opinion and unofficial agencies of government in Germany.

Professor John A. Fairlie, of the University of Illinois, returned to the United States in early summer from a trip around the world. The committee on county government which the National Municipal League recently appointed will carry on its work under Professor Fairlie's chairmanship.

Dr. Shelby M. Harrison, director of the department of surveys and exhibits and vice general director, will, on September 1, succeed Dr. John M. Glenn as general director of the Russell Sage Foundation.

Dr. Russell M. Story, of Pomona College, sailed for the Philippines and China in June, and will remain in the Far East until September, 1932, as visiting professor of California College in China on the Seeley

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G. Mudd fellowship. He has also been appointed visiting professor at Yenching University.

Professor Clarence A. Berdahl sailed for Europe in June and will be on leave of absence from the University of Illinois during the coming academic year. While in Geneva, he will give a number of lectures at the Institute for Higher International Studies.

Professor Harold S. Quigley, of the University of Minnesota, gave a course in the first term of the summer session at Ohio State University on international organization, and another on contemporary Japan.

Professor W. W. Willoughby, of the Johns Hopkins University, served as adviser to the Chinese delegation to the conference on the opium traffic which was held in Geneva in June under the auspices of the League of Nations.

Professors Jerome G. Kerwin, Harry Gideonse, and Louis Wirth constitute a committee to prepare the general introductory social science course at the University of Chicago in connection with the new plan of college education.

Mr. Frederic W. Ganzert, formerly teaching fellow at the University of California, will conduct Professor Francis G. Wilson's courses on political theory at the University of Washington during the coming academic year. Dr. Ganzert has recently been in Brazil on a Carnegie fellowship.

Mr. Robert T. Pollard, recently a fellow in political science at the University of Minnesota, has accepted an assistant professorship in the department of oriental history, literature, and languages at the University of Washington. His field will be that of Far Eastern history, government, and politics.

Professor James Hart, of Johns Hopkins University, gave courses in the recent summer session of Columbia University.

Dr. William C. Casey has resigned at the University of Chicago in order to accept a professorship of political science at Columbia University.

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Professor Harold H. Sprout, of Stanford University, has been appointed to a position in the department of politics at Princeton University for the coming year.

Professor Harold R. Enslow, of Union College, has been appointed a New York State Tax Commission fellow, and is making a study of the relations of federal and state income taxes.

Dr. H. Arthur Steiner, of the University of Michigan, has accepted an instructorship in political science at the University of California at Los Angeles.

Dr. Charles C. Rohlfing, instructor in political science at the University of Pennsylvania, has been advanced to an assistant professorship. His doctoral dissertation, *A National Policy for the Regulation of Aviation,* is now in press.

Professor Rodney L. Mott, of the University of Chicago, taught during the summer quarter in the American University Graduate School, Washington, D.C. He gave courses on due process of law and contemporary British politics.

Dr. Howard B. Calderwood and Mr. Lawrence Preuss, instructors at the University of Michigan, will resume their work in the fall after a year abroad as research fellows.

Professor William M. McGovern, of Northwestern University, has been granted a semester's leave of absence to make a study of Ural-Altaic peoples in Hungary, the Balkans, Asia Minor, and Persia.

Dr. Rudolf A. Cleman, formerly of Northwestern University and at present director of scientific publications of the Century of Progress, Chicago International Exposition, 1933, has been appointed associate chief of the Social Science Division for the planning and preparation of exhibits in this field.

Miss Flora May Fearing, research associate in political science at Northwestern University, is offering a course at Stanford University during the second half of the summer quarter on quantitative methods in politics and administration.

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Mr. Kenneth P. Vinsel, who received his doctorate at the State University of Iowa in June, has been appointed associate professor of political science at the University of Louisville.

Mr. S. C. E. Powers, candidate for the doctor's degree at the State University of Iowa in August, will go to the Henderson State Teachers College, Arkadelphia, Arkansas, as head of the department of government and sociology.

Dr. James Q. Dealey, Jr., of Western Reserve University, has accepted a position at Hamilton College vacated by Mr. George L. Ridgeway, who will spend the coming year at Oxford as a Carnegie fellow in international law.

Mr. Francis E. Ballard, who received his doctorate at the State University of Iowa, has been appointed instructor in political science at Princeton University.

Messrs. Earl E. Warner and W. R. Maddox, instructors in political science at the University of Michigan, have accepted positions at the James Millikin University and the University of Kansas, respectively.

Miss Betty Bouer, of Vassar College, has been appointed Ueland fellow in government and citizenship at the University of Minnesota for the coming year.

The Carnegie Endowment for International Peace has announced the appointment of Mr. Henry Kittredge Norton to make a study of political and economic developments in South American countries. Professor David P. Barrows, of the University of California, is one of the newly elected trustees of the Endowment.

Among the ten members of a prohibition advisory research council, the appointment of which was announced in May by the federal prohibition director, are Professors William S. Carpenter, of Princeton University, Charles W. Pipkin, of Louisiana State University, and Samuel C. May, of the University of California. The inquiries planned are to be carried on mainly by graduate students under the direction of members of the council.

A graduate school of international affairs is to be established at Columbia University under terms of the will of the late Edwin B. Parker,

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of Washington, D.C. The endowment provided for the undertaking will eventually amount to about two million dollars. Of this sum, approximately half will be available at once.

At the fourteenth annual American Country Life Conference, to be held at Cornell University on August 17-20, a forum on county organization and management will be led by Dean Robert H. Tucker, of Washington and Lee University, chairman of the Virginia Commission on County Government, and another on village and township government by Professor E. C. Branson, of the University of North Carolina.

Political scientists who would be interested in participating in the Third International Congress of Eugenics, or who would care to receive announcements concerning it, are invited to correspond with the secretary, Mr. H. H. Laughlin, Cold Spring Harbor, Long Island, New York.

The second Earlham Institute of Polity was held at Earlham College, Richmond, Indiana, on May 14-16. As last year, the sessions were devoted to discussion of the relations of the United States with Latin America and the Orient. Principal speakers included Mr. Chester D. Pugsley, Dr. James Brown Scott, Major General Edward A. Kreger, and Messrs. Charles S. Smith, chief of the foreign service of the Associated Press, and Gilbert Bowles, a missionary of the Society of Friends.

One of the three major divisions of the program of the second quadrennial Institute on Human Relations, held at the University of North Carolina on May 3-9, was concerned with international relations and government. As Weil lecturer for 1931, Professor Harold J. Laski delivered addresses on "The Crisis in the Modern State," "The Place of Administration in the Modern State," and "The Expert in Democracy." Professor James T. Shotwell also spoke on "The New Era in International Relations."

While retaining its independent corporate existence, the National Institute of Public Administration has been affiliated with Columbia University, and Dr. Luther H. Gulick, director, has been appointed Eaton professor of municipal science and administration in that institution. The Institute has recently received an endowment of

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$1,500,000, and will also have an annual budget allowance from Columbia. It is expected that the Training School for Public Service, established in 1911 and affiliated with the Institute, will be developed considerably.

The third annual meeting of the Iowa Political Science Association was held at the Iowa State Teachers College, Cedar Falls, on May 1-2. There were round tables on state legislatures and legislative methods, administrative areas, and the teaching of the introductory course in political science. Professor Thomas H. Reed, of the University of Michigan, discussed with the Association various means of coöperation between the American Political Science Association and sectional and state organizations. The officers of the Association are: president, Geddes W. Rutherford; vice-president, C. F. Littell; secretary-treasurer, H. C. Cook.

The Eighth Institute under the Norman Wait Harris Memorial Foundation was held at the University of Chicago from June 22 to July 3. The topic was Unemployment as a World Problem, and the visiting lecturers included John Maynard Keynes, of Cambridge, England, and Karl Pribram, of the University of Frankfurt, Germany. The round table meetings were attended by twenty-five experts on the subject from all parts of the United States. As usual, the public lectures will be published by the University of Chicago Press.

The executive committee of the National Municipal League has voted to reconstitute the committee on county government which drafted the Model County Manager Law in 1930. The new committee will be expected to study county government in its general relations to state and municipal governments. The executive committee has authorized appointment of new committees on the selection of judges, developments in municipal home rule, city government in relation to housing, and the preparation of a model corrupt practices law.

A conference on "pressure groups and propaganda" was held May 2-3 at the University of Chicago. The conference was authorized by the Social Science Research Council, and was organized under the direction of a local committee consisting of Professors Charles E. Merriam, Harold F. Gosnell, and Harold D. Lasswell. The purpose was to consider the present status of research in the field and to indicate fruitful lines of development. Among those present from outside Chicago were

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Professors E. Pendleton Herring, Harvard University, Herman C. Beyle, Syracuse University, Ralph D. Casey, University of Minnesota, Harwood L. Childs, Bucknell University, A. Gordon Dewey, Union College, George A. Lundberg, University of Pittsburgh, W. Brooke Graves, Temple University, Peter H. Odegard, Ohio State University, and Kimball Young, University of Wisconsin.

At the desire of the executive committee of the International Conference of Institutions for the Scientific Study of International Relations, Professor Alfred Zimmern, director of the Geneva School of International Studies, has offered a room in the Conservatoire de Musique where, it is thought, gatherings might be held during at any rate the opening week of the Assembly, the first two to take place at 8:30 P.M. on Tuesday and Thursday, September 8 and 10. Teachers of international relations expecting to be present are requested to communicate with Professor Zimmern suggesting any particular matters that they would like to have brought forward for discussion. This should enable them to be given advance notice of the order of proceedings proposed to be followed at the meetings. Communications should be addressed to Professor Zimmern at the Conservatoire de Musique, Place Neuve, Geneva.

On April 3-4, a conference on the teaching of undergraduate courses in the social sciences was held at Northwestern University. One hundred and twenty-seven instructors in political science, history, economics, philosophy, psychology, sociology, and anthropology were in attendance, representing fifty-three middle-western colleges. Of two general sessions, the first was devoted to a consideration of freshman courses in the social sciences and the second to the relation between teaching and research in the undergraduate college. Five round-table meetings were held. At one devoted to political science, the introductory course in political science was discussed on the basis of papers presented by Professor David King, of the University of Akron, Professor W. F. Cottrell, of Miami University, and Sister Eucharista, of the College of Saint Catherine. Professor A. R. Ellingwood, of the department of political science, served as chairman of the committee in charge of arrangements.

A series of social science research conferences were held at the California Institute of Technology, Pasadena, on June 17-18 under the joint auspices of the Pacific Coast Regional Committee of the Social

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Science Research Council and Sections K and L of the American Association for the Advancement of Science. The program was arranged by a representative committee under the chairmanship of Professor William B. Munro. Among subjects dealt with in round-tables were quantitative methods in the social sciences, the problem of tax reform, American foreign policy and foreign trade, law enforcement and the prevention of crime, the formation of public opinion and the reorganization of political parties, the consolidation of local government units, the primary system of nominations, problems of urban-rural relationships, and immigration problems on the Pacific coast. It was agreed to form an organization of social scientists on the Pacific coast, meeting every June.

The eleventh session of the Institute of Politics was held at Williamstown, Massachusetts, from July 30 to August 27. The principal conferences, with leaders, were as follows: the future of democracy, Professor Arthur N. Holcombe, Harvard University; social psychology of international conduct, Professor G. M. Stratton, University of California; international problems of commercial and financial policy, Professor Jacob Viner, University of Chicago; the future of the British commonwealth of nations, Dean Percy E. Corbett, McGill University; distribution of wealth and income, Professor T. E. Gregory, London School of Economics; the political situation in western Europe, Professor William E. Rappard, School for Higher International Studies, Geneva; the disarmament problem, Mr. James G. MacDonald, Foreign Policy Association; and the pact of Paris, Professor George H. Blakeslee, Clark University. Among special lecturers were Dr. Alberto de Stefani on the economics of Fascism, and Dr. Guustav Stolper on the economics of capitalism.

The seventh annual awards of research fellowships were announced by the Social Science Research Council last April. Twenty-four new fellows were appointed for 1931-32, and two extensions from 1930-31 were made. Appointments of special interest to political scientists include the following, with, in each case, the subject to be studied: Harwood L. Childs, Princeton University, "The Influence of Industrial and Labor Organizations on German Government and Politics;" Herbert E. Dougall, Northwestern University, "The Postwar Relations Between French Railways and the French Government;" J. A. Clifford Grant, University of California at Los

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Angeles, "The Bearing of the American Federal System upon Constitutional Guarantees Relative to Self-Incrimination, Illegal Searches and Seizures, and Double Jeopardy;" Everett C. Hughes, McGill University, "The Catholic and 'Christian' Trade Unions, Coöperatives, and Political Parties of Germany in their Relations to Secular or 'Neutral' Organizations Serving the Same Ends;" Charner M. Perry, University of Texas, "Fundamental Concepts in the Social Sciences;" Harry R. Rudin, Yale University, "German Imperial Policy in the Kamerun;" James T. Russell, University of Chicago, "A Study of Political, Social, and Economic Problems with a View to Measuring Trends in International Attitudes;" Francis G. Wilson, University of Washington, "The Rôle of the International Labor Organization in the Development of World Government." One of the reappointments is John T. Salter, University of Wisconsin, "The Ward Leader: A Study of the Republican Party Organization in Philadelphia." Among political scientists receiving grants-in-aid during 1930-31 were Professors William Anderson, of the University of Minnesota, Clarence A. Berdahl, of the University of Illinois, James M. Callahan, of the University of West Virginia, Cortez A. M. Ewing, of the University of Oklahoma, Karl J. Friedrich, of Harvard University, Johannes Mattern, of Johns Hopkins University, and Wylie Kilpatrick, of the New Jersey League of Municipalities.

Present Status of Legislation Requiring the Teaching of the Constitution in Colleges and Universities. Since the World War, vigorous demand has arisen for legislation requiring the teaching of the national and state constitutions in the public schools; and state-supported colleges and universities have incidentally been affected. The leading organizations promoting the movement have been the National Security League and the American Bar Association, although many others, such as the Daughters of the American Revolution and the American Legion, have participated. Various schemes of adult education are promoted; oratorical contests on the Constitution are staged; and, in general, veneration of and devotion to national institutions and symbols is encouraged.[1] The explanation of the movement is to

[1] This movement marked a reversal of pre-war tendencies. Walter Lippmann, in 1914, said in his *Preface to Politics*, p. 184: "The vital part of the population has pretty well emerged from any dumb acquiescence in constitutions. Theodore Roosevelt, who reflects so much of America, has very definitely cast down this idol. Now since he stands generally some twenty years behind the pioneer and about

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be found partially in the heights attained by nationalistic feeling during the World War. Probably as important was the "bolshevik scare" which occurred soon afterwards. Many prominent citizens were, to put it mildly, somewhat disturbed by uncertainty as to whether the *status quo* was going to survive.[2] A reflection of this factor is seen in a typical statement of the committee on American citizenship of the American Bar Association: "Contemplating, then, the whole field of our citizenry, the proposed subversion of our institutions by the reds and the pinks, the ignorance of the foreign vote, and the general apathy of the intelligent American voters, the prospect for the future is appalling."[3]

The teaching of and understanding of and respect for the Constitution was hit upon as a method of checking "the proposed subversion of our institutions." As a result, legislation has been adopted in forty-three states requiring instruction in the Constitution in the public schools.[4] In twenty-three states, such legislation has been made applicable to state-supported colleges and universities.[5]

The law relating to institutions of higher learning is uniformly included in an act designed primarily to apply the policy to the public schools. In most cases, the law affects all state-supported colleges and universities, although in Arizona and West Virginia it refers only to teachers colleges. The Georgia law affects "colleges," but not specifically the state university. In Nevada, Oklahoma, and Utah, private

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six months ahead of the majority, we may rest assured that this much-needed iconoclasm is in process of achievement." For a reasoned defense of the movement, see A. B. Hart, "'Instilling' the Constitution," *Current History*, XXVII, pp. 104-105 (1927).

[2] The committee on American citizenship of the American Bar Association said that the issue was very clearly drawn between "stability and radicalism; between the forces of real progress and retrogression; between a government under a written constitution as established by our fathers and a government by the mob—or, if you please, the proletariat. . . ." *Reports*, American Bar Association, 1923, p. 442 *et seq.*

[3] *Reports*, American Bar Association, 1924, p. 255 *et seq.* See also other statements of the committee published in the *Reports*.

[4] For accounts of the movement and its results, with special reference to the public schools, see Bessie L. Pierce, *Public Opinion and the Teaching of History in the United States*, 184-205 (1926), and *Civic Attitudes in American School Textbooks*, 229-241 (1930).

[5] In Connecticut (not included in this number), it is required that normal colleges shall offer courses in the duties of citizenship, including a knowledge of national, state, and local government. *General Statutes*, Sec. 836 (1930).

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institutions of higher learning are also included.[6] In ten of the twenty-three states, the state constitution, as well as the national constitution, is required to be included in the course.

In eight states, the law specifically enjoins that students must have had the course on the Constitution before being eligible to receive a certificate of graduation. In the remaining states, it provides that regular courses of instruction shall be given, apparently leaving it to the college authorities to determine whether such study shall be prerequisite to graduation. The National Security League favored the passage of a bill making the course compulsory for all students,[7] but offered an alternative draft providing merely that courses should be given.[8]

Considerable diversity exists in the amount of instruction offered under these laws. In a few instances, the legislation itself specifies the amount. The laws of Florida, Nevada, South Carolina, and Wyoming stipulate that the instruction shall be given for at least "one year." The Illinois statute requires one hour per week for an unspecified length of time. The Texas statute prescribes three term-hours in American government, with special emphasis on the constitutions of the United States and Texas.

In eleven states, the statute provides that such instruction shall be given "to an extent to be determined by the state superintendent of public instruction" or some similar educational official. As far as communication with these authorities reveals, they usually refrain from exercising the power in connection with the colleges and universities. Such inaction is appropriate, in view of the usual legal relationship existing between them and the state institutions of higher education.

[6] Of the twenty-three states, seven (Ariz., Ark., Calif., Fla., S.C., Tex., and Wyo.) which do not directly require the instruction to be offered in private colleges probably achieve the same end indirectly by an incidental provision of the law prescribing that applicants for teachers' certificates shall have passed an examination upon the principles and provisions of the Constitution, or have had a course upon the subject. In those states where the law is applicable only to the lower schools, but incidentally requires the passage of an examination upon the Constitution for a teacher's certificate, the curricula of both state and private colleges are probably affected.

[7] Letter to writer, April 15, 1931. The Arkansas statute follows practically verbatim the No. 1 bill of the National Security League. See *General Acts*, extraordinary sess., 44th General Assembly of Arkansas, pp. 170-172 (1923).

[8] The alternative draft proposed by the League was adopted almost verbatim in Colorado, among other states. See *Laws*, 25th sess., General Assembly of Colorado, Ch. 151 (1925).

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ANALYSIS OF LEGISLATION REQUIRING INSTRUCTION IN NATIONAL AND STATE CONSTITUTIONS IN STATE COLLEGES AND UNIVERSITIES

Column 1. Year in which law was enacted.
Column 2. Requirement of teaching of national constitution.
Column 3. Requirement of teaching of state constitution.
Column 4. State superintendent of public instruction or similar authority empowered to determine "extent" of instruction.
Column 5. College or university authorities expressly or implicitly left power to determine amount of instruction.
Column 6. Course in constitution or constitutions specifically required by law of all students before graduation.
Column 7. Legislation requires merely that the course be offered.

State	1	2	3	4	5	6	7
Alabama	1923	x		x			x
Arizona	1924	x	x		x		x
Arkansas	1923	x			x	x	
California	1923	x		x			x
Colorado	1925	x		x			x
Delaware	1923	x	x	x			x
Florida	1927	x				x	
Georgia	1923	x	x		x	x	
Idaho	1923	x		x		x*	
Illinois	1921	x	x				x
Kentucky	1924	x		x			x
Louisiana	1926	x			x		x
Missouri	1927	x	x	x			x
Nevada	1923	x	x		x	x	
Oklahoma	1925	x		x		x	
Oregon	1923	x		x			x
Pennsylvania	1923	x		x			x
South Carolina	1924	x			x	x	
South Dakota	1923	x	x		x		x
Texas	1929	x	x			x	
Utah	1923	x			x		x
West Virginia	1923	x	x	x			x
Wyoming	1925	x	x		x	x	

* Requirement for graduation in Idaho is by rule of the state board of education.

The Idaho state board of education has required two semester hours in the Constitution for graduation. Regulations of the California state board apply only to the junior colleges, and allow these institutions considerable latitude with reference to the course.[9] In Ar-

[9] See *Rules and Regulations of the State Board of Education* (Bulletin F-1, Sacramento, 1930).

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kansas, South Carolina, and Wyoming, the state superintendent of public instruction, or the corresponding official, is authorized to make due arrangements for carrying the law into effect, and for that purpose to prescribe suitable textbooks for college classes. In Arkansas, this power has not been exercised.[10] Information on the other two states is not available. In the remaining states, the power to determine the extent of instruction to be offered on the Constitution is either implicitly or expressly left to the appropriate college or university authorities.

As to the content of the course necessary to meet the requirement, the most common provision is that "there shall be given regular courses of instruction in the Constitution of the United States." Another popular formula prescribes that instruction shall be given "in the essentials of the United States Constitution, including the study of and devotion to American institutions and ideals." The Texas statute requires instruction in American government, with special emphasis upon state and national constitutions. This appears to be superior to the general requirement, for it interferes less with the established curriculum, and at the same time gives the course a broader scope than do most of the laws.

A few observations may be ventured with respect to the legislation under examination. Legislative regulation of the college curriculum is by no means unprecedented, but a state of affairs in which legislatures should add to or subtract from the curriculum at the behest of organized pressure groups would be most undesirable. Considering the peculiar nature of the movement here chronicled, there seems to be no great cause for fear that this practice will spread to other fields of study. But it may be said that if instruction under this particular set of laws were carried on in the fashion desired by most of the interested propagandist agencies, the result in the long run would probably not be altogether happy. It would not be unfair to say that these organizations desire the colleges to fix firmly in the student's mind the attitude that the document framed by the Fathers in 1787 embodies the finalities of political development.[11] The power of the state to employ its schools for this purpose is unchallengeable; but the wisdom of such a policy is another matter.

[10] Letter from assistant state superintendent to the writer, April 28, 1931.

[11] So far as is known, no energetic effort has been made by these agencies to influence the attitudes of college instructors. But with reference to secondary schools, see the report of a committee of the Illinois Bar Association reprinted by the American Bar Association in *The Constitution and the Schools.*

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Moreover, the advocates of this sort of legislation appear, as a group, to be unaware of the fact that usage, judicial interpretation, and party practices have wrought tremendous changes in the meaning of the Constitution. When they do become aware of such changes, they usually denounce them indiscriminately on principle. It is submitted that it is not a proper function of colleges to propagate such an attitude. Blind worship is as bad as blind criticism. The desirability of equipping the college graduate with a knowledge of political problems is admitted by every one; but instruction on the Constitution alone will not meet this need.

VALDIMER O. KEY, JR.

University of Chicago.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

Liberty in the Modern State. By HAROLD J. LASKI. (New York: Harper and Brothers. 1930. Pp. iv, 288.)

It is now fourteen years since Professor Laski began to publish his political philosophy. In that time he has built for himself a position of eminence unique in England. In the words of the *Times* reviewer of his *Grammar of Politics,* he has restated the tradition of John Stuart Mill in terms of the twentieth century. He has done more. No responsible judge is likely to deny that his work in this century is already as important as was that of Mill in the last century, and is as certain of immortality. Any one who will consult this present volume on *Liberty in the Modern State* will find there more passages than one which are as fine as anything which has been penned on the subject by any living writer in the English language, and which justify H. W. Nevinson, when publishing his volume of essays on liberty, in beginning with Milton and ending with Laski. A recent reviewer in the *Nation* declared that political ideas in England are a spent force. When one reads Professor Laski's writings, one detects little sign of this abatement of vitality. The time, however, has come when a critical estimate of Professor Laski's philosophy should be attempted.

Certain things stand out. Professor Laski started as a pluralist at a time when pluralism was associated with the guild socialist group. He has steadily progressed in the direction of classical individualism. Although importance is attributed to the part played by associations, no relic is left of the doctrine which attributed to these associations, as well as to the state, a *persona realis* and a group consciousness. The associations are merely supplementary forms of organization which the individual chooses for himself to give shape to his social activities. Further, it is only in a very popular sense that Professor Laski can be called a socialist. There is very little of the Platonist in him, and, although there is a very great deal indeed of the Rousseauist, it is the young Rousseau, and not the Rousseau of the *Social Contract,* with whom he has sympathy. He is, and has been becoming increasingly for years, a philosophic anarchist—an exponent, to use his own phrase, of the doctrine of "contingent anarchy." His individualism is not of the brand of Spencer and Nietzsche, founded on Charles Darwin with

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a spice of original sin, but is founded on the original grace of Condorcet and Proudhon. He has a truly Girondin belief in the value of discussion—a value much underestimated in certain quarters today. He has that moral elevation which characterizes all who sincerely believe in the preëminence of reason; but it is questionable whether his philosophy can effectively confront, as does the philosophy of Plato and the empiricism of Machiavelli, the problem of the stupid man. His interpretation of politics is decidedly that of a philosophy of values, not of an amoral science. In the light of these observations, it is possible to comment more incisively upon the four chapters into which *Liberty in the Modern State* is divided.

The crux of Chapter I, on "The Nature of Liberty," is that conscience may be perverse, foolish, and ignorant, but at least it is our own; that not to follow it is to betray freedom; and that "man is a one among many obstinately refusing reduction to unity." On the basis of political science, I emphatically concur in this admission. But on the basis of the "ought" of political philosophy, the scholastic doctrine of the rational conscience, which resolves the atomism of a mere intuitive conscience or prejudice into some general rule of law, does not seem to have been explored. Rational experience is not private. This is not to underestimate the importance of the admission, which the writer makes, of the need for information as a basis for judgment. We want a pamphlet on conscience from Professor Laski. It seems to me that he might have difficulty, despite all his balancing of natural rights by equality, if he were dealing with a man who claimed a direct intuition, like Lord Inchcape, on the subject of the sacred rights of property, but who, *per contra,* like Aristotle, had no monition of conscience on the subject of equality. The revival of a doctrine of natural rights is infinitely more dangerous than the long-called-for revival of natural law.

The crux of the second chapter, on "Freedom of the Mind," seems to lie in the statement that freedom of speech is a right, whether in war or in peace. "If a man feels, like Sir Henry Campbell-Bannerman, that British policy in South Africa is 'methods of barbarism,' it is his right, as well as his duty, to say so." This presumably does not mean that it is his legal right; and I am unable to see that a moral right adds vigor to a moral duty. Indeed, Professor Laski seems to waver between the position (p. 177) that only force may be met with force, the position (p. 135) that voluntary bodies are only entitled to practice what they please outside the realm where their conduct "ar-

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rests the continuity of general social habits,'' and the position (p. 179) that the issue of suppression of conduct, merely because society dislikes it, is ''impossible to decide as a general principle.'' The distinction is not made between the theory of sound law in a compulsory, heterogeneous society, which, just because it has no higher ultimate bond than force, must respect freedom (short of disorder) as something higher than itself, and in a voluntary, homogeneous society, which, because it involves moral assent on principles, is entitled to exercise censorship in every fashion consistent with those principles. In this latter society the question is not of whether censorship is good or bad in itself, but only of whether it is reasonable or unreasonable in its methods.

The crux of the third chapter, on ''Liberty and Social Power,'' is that ''men think differently who live differently,'' and that those who possess power in a society of unequals tend to suppress ideas which would disturb them in possession. As a statement of positive politics, this evokes entire agreement. But as an indication of the nature of an equalitarian ideal, I wonder whether Professor Laski does not leave readers with the impression that all experiences—those of the most stupid and of the wisest—are born free and equal. One wonders whether the true bases for the equality campaign do not lie in the monstrous perversions of values involved in the fortunes (and disproportionate control of power) of pork-packers, profiteers, and other such folk, and in the danger that any class superiorities (or anything but strict social equality) will be founded on arrogance. These comments are not made as adverse criticisms. They are made in order that the road to complete intellectual assent may be found for those who are already in profound emotional accord with Professor Laski's general position.

GEORGE E. G. CATLIN.

Cornell University.

Politics. By HAROLD J. LASKI. (Philadelphia and London: J. B. Lippincott Company. 1931. Pp. 160.)

As an indication of the development of Mr. Laski's political thought, the ''Hour of Politics'' has an importance far greater than its title and its brief compass of one hundred and sixty pages would suggest. In the introductory chapters on the nature of the state and its place in the great society, one is at first somewhat surprised to come upon an almost, if not quite, orthodox statement of the modern doctrine of legal

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sovereignty, though coupled still, it is true, with evidences of the author's persistent concern over the fact, as he sees it, that the traditional doctrine almost inevitably results in the separation of ethics from politics, through the identification of *jus* with *quod jussum est*. But on second thought one is reminded that whereas in his earliest works this concern led Mr. Laski to an equally persistent confusion of the "is" with the "ought to be," and almost, though never quite, to a denial of sovereignty, he has in his later writings shown a progressive clearing up of this confusion, and an increasing willingness to acknowledge the actual sovereignty of the state, despite the uses made of it and the claims too often put forth in its name. The opening pages of the *Politics* reveals how far he has traveled along both these roads. Surprisingly faint, also, are the echoes of his pluralistic point of view, in his assertion of the essentially federal nature of society. On his favorite question of the justification of state power, however, the author, as heretofore, finds such justification only in the securing to man "at the least possible sacrifice," of the "maximum satisfaction of human wants," or in other words of his "rights"—according still, it will be noted, to Mr. Laski's definition of those rights. Consistently with this theory, law also remains "a claim to obedience validated by experience of its results."

The second half of the book considers state organization and international organization. The state organization expounded and advocated is that of the cabinet government largely of the English type; and here again one is surprised at the skepticism expressed with regard to functional representation. Mr. Laski sees as inevitable the development of international organization, apparently in the form of the existing League of Nations, for which he predicts a steady progress toward true and complete statehood. One or two typographical errors, or errors in spelling, and one error of fact, in the statement of the amendment process under the Constitution of the United States, have been detected. These, however, are negligible in a work of such sustained excellence. In the reviewer's opinion, the concluding paragraphs on the tremendous necessity for international organization are, in their nice balance of intellectual detachment, strong moral conviction, and felicitous expression, reminiscent of the best in the political literature of all ages.

ELLEN DEBORAH ELLIS.

Mount Holyoke College.

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Antidémocratie. By Silvio Trentin. (Paris: Librairie Valois. 1930. Pp. 278.)

Aux sources du fascisme. By Silvio Trentin. (Paris: Marcel Rivière. 1931. Pp. 212.)

Le Procès de Rosa. Preface by Jean-Richard Bloch. (Paris: Librairie Valois. 1930. Pp. xv, 164.)

These recent publications throw a beam of light on certain theoretical and practical developments in the Fascist movement. Professor Trentin, after his monumental work on the transformation of Italian public law, now devotes two volumes to some of the outstanding problems of the new order of things. Though an exile and a bitter enemy of Fascism, he always maintains his objectivity and philosophical outlook. In his *Antidémocratie,* he shows in an interesting and impressive way how the traditional institutions of modern Italy have been destroyed or remolded by the Fascist dictatorship. Practically the whole constitution of Charles Albert has become a show window for the new state. For this purpose, a new nationalistic myth was created which gives a certain compensation for the confiscation of human rights.

In his second volume, Professor Trentin repudiates very convincingly the generally accepted thesis that the chief cause of Fascism was the corruption and inadequacy of the Italian democracy. The author corroborates the conclusion so forcibly demonstrated by Benedetto Croce that the widely calumniated Italian Liberalism accomplished great and important results, and that its failures were not due to the parliamentary system but rather to the corrupting and debasing influences of the former despotic systems. One of the most interesting parts of the book is the demonstration of the fundamental antagonism in the system between the despotic head and the democratic body. The author strongly emphasizes that the whole system would be an impossibility without the concurrence of two external forces: *haute finance* and the Roman Catholic Church. In his last chapter, Professor Trentin seeks new bulwarks to maintain a democratic state. It is interesting to observe how his whole attitude is near to that of the great Monarchomachs, showing how similar causes lead to similar conclusions. This analogy is almost pathetic when one reads the documents of the De Rosa trial. This young man, a former Fascist, tried to murder the Italian crown prince in Brussels. His speeches and those of the witnesses before the jury of Brussels show an ideology which is very

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close to that of the tyrannicides of the Absolutistic period. This analogy goes even farther when one of the witnesses speaks of the 3rd of October, 1925, in Florence as the "new St. Bartholomew."

OSCAR JÁSZI.

Oberlin College.

The Marxian Theory of the State. BY SHERMAN H. M. CHANG. With an introduction by John R. Commons. (Chester, Pa.: John Spencer, Inc. 1931. Pp. xiv, 230.)

In 1903, the present reviewer wrote a book in Hungarian called "The State Philosophy of Historical Materialism," and he now experiences a strange feeling when he sees that a theory which twenty-eight years ago failed to arouse much academic interest has become perhaps the greatest practical issue of our period. Whether one admires, as does Mr. Chang, the Marxian conception of history and politics, or whether one is skeptical about it, as the reviewer is, one cannot fail to admit that perhaps no other ideology in history has molded social realities so strongly as has the Marxian. The economic side of the Marxian doctrine has been abundantly treated by many able theorists, but the political side of the teaching has remained somewhat neglected in academic circles. Therefore Mr. Chang's enterprise must be welcome to all who are interested in present-day political problems.

Mr. Chang's book contains three main divisions, of varying merit. The first part, devoted to the general aspect of the Marxian philosophy, is a good orientation, but is sometimes incomplete and hasty. The second part, containing the main bulk of the book, treats the class-domination theory of the state, the overthrow of the bourgeois state by the revolution, the establishment of the dictatorship of the proletariat, the theory of the dictatorship, and the withering away of the proletarian state. This part, which is the heart of the book, is the most comprehensive and penetrating presentation of a long and passionate controversy to date. Mr. Chang is successful in showing in a cogent and decisive way that the original gospel of Marx and Engels was far nearer to the interpretation of the Bolsheviks than to the diluted and softened version of it given by the Revisionists. There can be no doubt that, in this process of softening and diluting, even conscious falsification has entered.

The third part of the book is given over to a discussion of the applica-

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tion of Marxism in Soviet Russia, and to the estimate of the Marxian system. This is the weakest part of the volume, accepting, without sufficient criticism, almost all the claims of the Bolshevik propagandists concerning both the past and the present. For instance, the Marxian communistic character of the Paris Commune is credulously adopted, and the Russian experiment is brought into harmony with the Marxian teaching, by accepting the Bolshevik subterfuge that Marx considered Germany of 1848 as already ripe for communism. In this way, one of the greatest theoretical blunders of Marx becomes an explanation of the paradox by which one of the most backward countries of Europe, Russia, has realized communism earlier than the most advanced industrial countries.

In his general appreciation of the Marxian ideology, also, Mr. Chang does not dig deeply enough. His original contributions to the subject are small, and on the other hand he is not sufficiently acquainted with the work of such men as Anton Menger, Labriola, Masaryk, Michels, Weber, and many others. Even the fundamental works of Werner Sombart and Oppenheimer are quoted only from their older and antiquated editions. Especially in the new edition of Sombart's work (*Der Proletarische Sozialismus,* 1924), he could have found the most complete bibliography on the subject.

OSCAR JÁSZI.

Oberlin College.

The Jacobins; An Essay in New History. BY CLARENCE CRANE BRINTON. (New York: The Macmillan Company. 1930. Pp. x, 319.)

The outstanding quality of Mr. Brinton's book is, perhaps, its sincerity and the willingness of the author to admit and point out himself the uncertainties of his conclusions. It is essentially an attempt to apply the methods of the "new history" to the most puzzling and controversial aspect of the French Revolution, and to define with some plausibility the social characteristics of the group of men known as the Jacobins. In his clear and dispassionate analysis, Mr. Brinton has studied the growth and organization of the "clubs" during the period which extends from 1789 to 1795. A painstaking scrutiny of the available documents has enabled him to conclude, with his characteristic honesty, that the Jacobins were neither "nobles nor beggars," but "almost anything in between." They did not constitute a class united by "common social standing, a common standard of life, and

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common economic interests." It is almost equally difficult to define the "platform" of the Jacobins, for "it might well be that each Jacobin had his own purposes, his own desires." As a matter of fact, most of their aims, ways of thinking, or interests were common to the other Frenchmen of the time, and even, as Mr. Brinton remarks, to a large proportion of Europeans and Americans of the middle of the nineteenth century. The Jacobins, however, attempted to distinguish themselves from their contemporaries through the adoption of a ritual, often described and not infrequently ridiculed. But, to quote the author again, "no ritual can be in itself empty;" as soon as it is adopted by a group, it becomes a discipline and molds the life of the members of the sect. The Jacobins had a faith presenting all the external appearances of a religion; they kept and reproduced rites and formulas of the Church they execrated, including the *confession générale* and the excommunication called by them *épuration*. This survey is accompanied with "tables" and whatever statistical data are available, not only in Paris, but in the departmental archives. It contains much that is new, and it will help to correct and dispel some of the hasty generalizations in which historians of the French Revolution have too often indulged.

The fact remains, however—and the author admits it himself—that "what was meant sincerely as a study in the new history has come to a conclusion strangely like that of very old-fashioned history indeed." This is a most important admission. But I confess my inability to share the regret expressed by Mr. Brinton when he declares that "before so surprising a conclusion sociology rightly recoils. The exploded intellectualist fallacy is obviously trying to creep in, and we had better not open the door any wider." Indeed, we may wonder right here whether the methods of the new history, legitimate and sound as they may be for the study of the slow course of calm periods, do not fail when they are applied to stormy episodes. If new history is apparently unable to give us a satisfactory solution, this failure may be due to an inherent defect of the methods themselves, or to the failure of the author to take into consideration some essential factors which are not susceptible of statistical study. That Mr. Brinton is not unaware of this fact appears in the first part of the excellent chapter devoted to the "tactics" of the Jacobins. It cannot be doubted that there was a tremendous Jacobin propaganda to which may be applied "even so modern a word as ballyhoo;" but it cannot be doubted either that this

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propaganda emanated from Paris and reflected the views of a small group of men.

A study of the Jacobins which leaves out the *Comité de Salut Public* and the *représentants en mission* is necessarily incomplete and cannot be "wholly satisfying." A reference to the recent study of Auguste Viatte (*Les Sources occultes du Romantisme: Illuminisme-Théosophie, 1770-1820,* Paris, 1928) would not have been out of place, for illuminism created a favorable "climate" for the development of Jacobinism. Much could be said about the influence attributed to Rousseau, and the author might have consulted with profit the studies of M. Edme Champion (*Jean-Jacques Rousseau et la Révolution française,* Paris, 1910). It is somewhat surprising to see that no mention is made of the thesis of Bernard Faÿ (*L'Esprit révolutionnaire en France et aux Etats-Unis,* Paris, 1925) in a short discussion of the attitude of the Jacobins toward their American brothers (p. 271, n. 6).

I would be even more unwilling than Mr. Brinton to recommend an unholy combination of Taine and Aulard; but it would be all to the advantage of the "new historians" if they admitted as frankly as Mr. Brinton does the complexity of the problems encountered in a study of the behavior of men during a period of stress, and if they recognized that apparently and occasionally large groups of men act against "their true selfish interests." Quite appropriately, the author has noted that the Jacobin spirit did not die after 1795, but manifested itself even during the Third Republic. Those of us who lived through the stormy years of the Dreyfus Affair cannot help believing that even in our day, as well as in the days of the Revolution, large groups of men can be found who act "against what they are aware is contrary to their true selfish interests."

GILBERT CHINARD.

Johns Hopkins University.

Pazifismus und Imperialismus. By LEO GROSS. (Leipzig und Wien: Franz Deuticke. 1931. Pp. x, 453.)

Pacifists have, as a rule, been less noted for the clear and rigorous character of their thinking than for the strength of their moral indignation. Furthermore, they have tended to adopt an apologetic attitude to insure themselves in advance against the charge of being idealists dreaming Utopian dreams. On both these counts, Dr. Gross has delivered a weighty and timely indictment. If pacifism is to establish itself as the new creed, it must surely be prepared to face its critics

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both fearlessly and with a system thought through to its logical conclusions. To neglect either is to invite defeat.

As the critical foundation for this study, the author has taken over virtually intact the system and methodology of Hans Kelsen; a prefatory note states that the aim of the work is to prove the fruitfulness of the master's juristic and political ideas by applying them to the concrete example of pacifist and imperialist theories. Whatever his intentions, however, Dr. Gross has been carried beyond this modest program by his own deep conviction of the rightness of the pacifist cause, and the book has in consequence a warmth which no mere application of a master's premises could lend it.

In this adherence to the doctrines of Professor Kelsen lies both the strength and the weakness of the work. It is a point of strength inasmuch as these doctrines present a sharply defined and clearly worked out system by means of which any given subject-matter can be tested. The insistence on the cardinal importance of the principle that a *Sollen* can never be derived from a *Sein,* that no moral or legal obligation can arise from a state of fact, makes it an easy task to detect the fallacies that lurk in the argument that we should work for world peace because the world is naturally headed in that direction anyhow. Likewise the reduction of the state to a mere system of legal relationships, having no substantive existence of its own, readily disposes, rather perhaps by assertion than by inescapable proof, of the notion that the state is a Leviathan which must be served.

But these doctrines have their weaknesses as well. The abstract, and even artificial, character of some of the reasoning involved is no doubt peculiarly difficult for, not to say irritating to, minds trained in the less strictly logical Anglo-Saxon methods. The recognition that the ultimate norm from which all lower norms derive their validity is merely hypothetical and can absorb any content is distinctly disappointing. It is difficult to escape the feeling that the magician did somehow put the rabbit in the hat before he finally and bewilderingly pulled him out.

For the most part, however, there can be little question that the author's critical commentaries on the current theories of pacifism and imperialism are amply justified. The attack, for example, on the utilitarian and liberal pacifist theorists is well conceived and ably carried out. Even though it be established that war, in general, is not now a paying proposition—and here Dr. Gross uses Norman Angell as his primary target—a particular war at some other time may

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demonstrably pay. If it does, then a pacifism based on an economic calculation must reverse its judgment.

The ultimate conflict between pacifism and imperialism, as Dr. Gross presents it, is the conflict between the ideology of Kant and that of Hegel. Accepting the latter, we accept the state as an entity and an end in itself, superior to all other ends. The world is constructed in the image of the sovereign state, a state which finds its highest expression in war. If, on the other hand, we accept Kant, then the state becomes an instrument for the living of the good life, and must meet the conditions that the moral law imposes. It is "the conception of the state as power against the conception of the state as law: Hegel against Kant." The all-devouring mortal god must give way to the ethical needs of men.

RUPERT EMERSON.

Harvard University.

The Historical Evolution of Modern Nationalism. By CARLTON J. H. HAYES. (New York: Richard R. Smith, Inc. 1931. Pp. viii, 327.)

Despite the relative wealth of historical data for the exploration of the events and movements of the last few centuries, curiously little is known which throws light in any interpretative way on the obscure and tangled history of the origins of nationalism. The bare facts, to be sure, are adequately recorded, but they do not go far toward explaining why it was that nationalism appeared, throve, and grew to its present overwhelming stature.

To this problem Professor Hayes addresses himself only briefly in a few pages of his concluding chapter, prefaced by the admission that it is highly improbable that any definitive answer to it can be found. For the most part, however, he is concerned less with the inner history of the evolution of nationalism than with the history of the doctrine of nationalism. In consequence, the present volume, which is closely linked to the author's earlier *Essays on Nationalism,* is made up largely of a series of more or less interconnected essays on writers of the last two centuries who have been selected as typical of phases in the development of the doctrine from its early cosmopolitanism and liberalism to its present virulent, or, to use Professor Hayes' term, integral, form.

The distinctions that the author draws between the different types of nationalism are suggestive and illuminating, regardless of whether or not they find ultimate acceptance. American thought has, on the whole, concerned itself far too little with analysis of the problems of

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nationalism, and the author has rendered a real service in clarifying the doctrinal history by breaking it up into its component parts. It is inevitable that objections will be raised to his selection and treatment of the exponents of the different types of nationalism, but these are, in the main, details about which each student of the question would have his private opinion. Rousseau and Fichte, for example, seem deserving of somewhat different and more elaborate treatment, and it is regrettable that the writers of the Austro-Hungarian Empire have been almost wholly neglected. More fundamental criticism can be levelled at the discussion of the nationalism of France at the time of the Revolution, and at the almost unsupported assertion that "the extreme nationalism of the Russian Bolshevists is likely to be remembered when the details of their economic experiments shall have been forgotten." The essential contribution of the volume, however, is that the inchoate mass of nationalist doctrine has been reduced to somewhat more manageable proportions.

The value of the book has been enhanced by the inclusion of a chapter on the economic factors in nationalism, but it is cause for regret that this chapter is necessarily rather summary and fails to develop systematically the distinctly significant suggestions that it contains. The shaping of politics by economics has been considerably overstressed, in its cruder forms at least, during the reign of the doctrine of historical materialism. It is well worth the risk of running counter to the fashions of the day to point out vigorously that the national state has shaped the progress of the industrial revolution quite as markedly as the latter has shaped the former. As Professor Hayes points out, the calm assumption that international trade will by itself shape an international political structure is by no means a necessary one.

In conclusion, the reviewer ventures to suggest that Professor Hayes might well have made a greater use of some of the European works on nationalism, such as those of Johannet, Michels, Otto Bauer, Karl Renner, Mitscherlich, and Friedrich Hertz. Devotion to primary sources is surely an admirable vice, but to push it to the extent of excluding the excellent critical and analytical studies which the Continent has produced in the last two or three generations makes it somewhat more dubious. In this field at least, Europe, far more immediately concerned with the problem than we are, has much to teach us.

RUPERT EMERSON.

Harvard University.

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International Government. By Edmund C. Mower. (Boston: D. C. Heath and Co. 1931. Pp. xix, 736.)

International Administration. By Norman L. Hill. (New York: McGraw-Hill Book Co., Inc. 1931. Pp. xi, 292.)

The field of international relations is still sufficiently virgin territory to make the appearance of a new text a matter of considerable interest as to its approach to problems and materials. The texts by Potter and Buell have stood almost alone as explorations of the varied contours in the different regions of the subject.

The title of Professor Mower's study, *International Government,* indicates, perhaps, that his base line lies somewhere between those of the authors already mentioned. He divides the field into seven major sections: the bases of international government; diplomatic intercourse of states; international executive and administrative functions; the international legislative functions; the international judicial function; the problem of war; the League of Nations. In an introductory section, he deals with the nature and origin of international government, factors contributing to the rise of modern international government (communications, democracy, federalism, economic internationalism, international aspects of national policies), and lines of future development.

Not the least significant aspect of the author's approach is his insistence upon the analogies between national and international "government." Throughout his discussion of the various topics, he draws the reader's attention back to the corresponding issues and their solutions in the sphere of national government. Professor Mower has succeeded admirably in charting the continuity, in both time and function, of the problems raised in both spheres, and in indicating the constantly widening scope of international activity for their solution.

The author's division of subject-matter necessarily involves some retracing of ground already covered. But this is not, as one reads the book through, by any means a disadvantage. For new perspectives are opened up and the reinvestigation of the organization and functions of a particular agency—for instance, the Council of the League of Nations as a conciliatory body, as a quasi-executive of the League, and as an organ with particular functions, e.g., in relation to minorities—only seems to sharpen the outlines and indicate the varied nature of the terrain which is included in the sphere of international government.

Ample reference to official and secondary materials, liberal cross

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references, and an unusually full index add to the utility of the book as a text. Altogether, it ought to remain for some time to come the most satisfactory available introduction to "government" in the international sphere.

Professor Hill's *International Administration* is the first post-war study in the United States which defines international administration in the terms of Reinsch and Sayre. By comparison with these earlier studies, as well as with the excellent essay of Leonard Woolf, the reader is at once struck by the changes both in the scope and in the machinery of international administration. Not only has the area widened, the number of activities and functions subject to international administrative control increased, but (particularly because of the existence of the League) the variety and effectiveness of the machinery for controlling these functions has increased also. It is to a description of this rapidly evolving complex of activities and agencies that Professor Hill's study is devoted.

After an introductory discussion of the rôle of international administration, the author devotes a chapter each to a description of international commissions with powers of control, national agents in international administration, the League of Nations (including the International Labor Organization) in general and mandatory administration in particular, and bureaus with informational and ministerial functions. Three chapters analyze some special problems—the conventional basis of international administration, the personnel of international administration, and supervision of bureaus and commissions.

Aside from published treaty texts and the official publications of the League of Nations, the author has availed himself of relatively little original material from the unions discussed. From one point of view, this is, perhaps, no disadvantage; the purpose of the study is to give rather a general survey of the field than an intensive analysis of the problems raised.

The range of materials is so diverse and the details so intricate that it would be out of the question to attempt to cover them at all adequately in less than 250 pages. The author has charted the field in its post-war aspects and indicated clearly enough the significance of the problems which rapid expansion both of function and of machinery has accentuated. Professor Hill points out the conventional basis of international administration. It is, without question, the indispensable sanction of consent which creates the authority and limits the scope of administration, whether in the national or international sphere. But

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not all consent creates internationality of administration; it seems somewhat difficult to group under the term "international" Tangier, Danzig, and Haiti. At least, the element of internationality of control is absent in the last case which exists, in form at any rate, in the first two, however the evidence of consent may be weighed by the mere existence of a treaty.

It is, perhaps, impossible to prevent minor errors of fact in covering a field so varied and fluid. To mention but two in the sphere of the League, there were two international labor conferences in 1929 as well as in 1926 (p. 113); and the problems of the relation of the International Wine Office is not mentioned (p. 230-1). Professor Hill has included five typical conventions indicating the variety of international administration and a brief working bibliography. It is greatly to be hoped that he will explore this rich field further; this preliminary survey enhances the eagerness of the reader for more.

PHILLIPS BRADLEY.

Amherst College.

Social Politics and Modern Democracies. By CHARLES W. PIPKIN (New York: The Macmillan Company. 1931. Two volumes. Pp. xxxiv, 377; vii, 417.)

Science and invention, joined to the acquisitive instinct of man, have given us an industrial society of unprecedented complexity. Concomitant with its development, political democracy has reached its fullest expansion. For the last fifty years, the representative governmental organs of the more advanced democracies have spent a large part of their time in the formulation of policies relating to the economic activities displayed by this industrial society. Much of the resultant legislation deals with the worker, and is based on a recognition of the social importance of his welfare.

Professor Pipkin's two volumes contain a very useful review of this type of legislation in England and France. The book is a revision and elaboration of the author's *Idea of Social Justice,* published in 1927. Some of the sections of the earlier book have been rewritten, all of the discussions have been brought up to date, and about thirty per cent of the present book consists of new material. A reference table of statutes and short appendices giving the organization of the ministry of labor in each country are also new.

The author is concerned primarily with the period from 1900 to

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1930, but there are introductory chapters summarizing the "social movement" during the nineteenth century in both countries. For the last thirty years, we have a detailed exposition of legislative acts dealing with a great variety of problems—conditions of work, housing and town planning, pensions, minimum wages, hours of labor, the settlement of industrial disputes, trade unionism and its methods, and unemployment. The book is, however, much more than an abstract of legislative measures. It is a history of the growth of social forces; for "the genius of the democratic method seems to lie in the gradual evolution of institutions, each generation making plainer through them its will for the well-being of the people." Laws can be understood only in their setting, and their significance can be appreciated only if we know the economic needs, the social environment, the political influences, which brought them into being. So "the story has been told as much as possible in the language of workers' congresses and debates in Parliament and official reports," and "the reasons that governments gave for their social policy, through the responsible minister, have been set forth at length." Much attention has been given to the political labor and socialist movements in both countries, for the author is particularly interested in showing "how the alliance of the industrial and political labor movements, much more effective in England than in France, has made it possible to call into active collaboration organized labor agencies in the public social services set up by governmental action." The British Labor party, adapting itself to the parliamentary system, has become an effective political force. On the other hand, the instability of the parliamentary régime in France, coupled with the French "love of logically working out an idea to its conclusion," has produced a schismatic labor movement dominated in the twentieth century by doctrinaire discussion. In both countries, social legislation has come slowly, crystallizing only when its need was generally recognized, and, resting thus upon the assent of a democracy, has produced no repercussions. It has "helped to create faith in popular government and has not been a cudgel used by legislatures," and so it has "weakened neither the organized labor movement nor frightened combines of capital into inactivity."

The experience of these two great democracies in dealing with issues that are so prominent in the industrial areas of our own country is very instructive, and the appraisal of that experience gives the book a practical value in addition to its academic usefulness. A third volume of the same character on Germany would be welcome. If we are to con-

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tinue to trail these countries in the field of social legislation, we should at least take full advantage of our position and endeavor to learn by observation of their mistakes.

A. R. ELLINGWOOD.

Northwestern University.

Law and Literature. By BENJAMIN N. CARDOZO. (New York: Harcourt, Brace and Company. 1931. Pp. 190.)

Law and the Modern Mind. By JEROME FRANK. (New York: Brentano's. 1930. Pp. xvii, 362.)

The Story of Law. By JOHN MAXCY ZANE. (New York: Ives Washburn. 1928. Pp. xiii, 486.)

The various addresses and essays of Chief Judge Cardozo, which the publishers have had the happy thought to reproduce in the first of these volumes, exhibit at their best the fine style and the broad sympathy of one of the greatest and the most revered of our judges. The title is taken from an essay originally published in the *Yale Review,* in which the literary qualities and types of judicial opinions are discussed by a master of the craft. Of the more occasional papers in the volume (including addresses at the third annual meeting of the American Law Institute, to the graduates of the Albany Law School, and on "The Comradeship of the Bar"), that on "The Home of the Law," is to be especially mentioned; it is a piece of classic poetry that breathes into a structure of mute stones the atmosphere of beauty and justice.

There is also included in the volume the essay on "A Ministry of Justice," originally published in the *Harvard Law Review,* which proposes that there should be an official committee charged with the oversight of the administration of justice and with the investigation and recommendation of proper legal reforms. It is an idea which has inspired the judicial council movement in a large number of states, one of the most promising developments of the last decade. The address before the New York Academy of Medicine is a magistral survey of the outstanding needs and problems involved in the reform of criminal justice, which not only emphasizes the great need of research in crime but should be read by lawyers and physicians as a statesmanlike chart of the directions which such research should follow.

In *Law and the Modern Mind,* Jerome Frank has applied to the processes of legal reason and judicial decision the more recent teachings of psychology. The result is one of the most stimulating and valuable books which has been written on law for some time—in the English

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language—and which has already started much-needed and healthy discussion. In effect, the purpose is to set forth and examine the source of what the author terms the "basic legal myth" that "law either is or can be made approximately stationary and certain." And the thesis is that this desire for certainty in law is, in important measure, to be explained by the fact that men "have not yet relinquished the childish need for an authoritative father and unconsciously have tried to find in the law a substitute for those attributes of firmness, sureness, certainty, and infallibility ascribed in childhood to the father" (p. 21). The thesis is examined with reference to the language of the law, the judicial process, the jury, the current theories of legal realism, fundamentalism and mechanistic jurisprudence, and to the views of Pound, Ihering, Demogue, Wurzel, Morley, Cardozo, and Holmes.

Without endeavoring in this brief review to notice the many problems of detail, it may be suggested that the discussion is more significant for its thoroughgoing enunciation of the proposition formulated by Mr. Justice Holmes many years since, that law is not a system of logical certainty, than for the psychological explanation given of the common belief that it is such. Indeed, as is suggested on p. 263, the explanation given is only one of numerous possible theories. Somewhat disorganized in outline, the work constitutes a brilliant critique of the prevailing authoritarian theories as to the nature of law, which is the more telling since it comes from a practicing lawyer.

John M. Zane's work is in the *genre* of the comprehensive, popular history, well-written and entertaining, which traces the story of law from the Tertiary Age to the sinking of the Lusitania. Penned by a lawyer of refreshing views, it readily carries, chiefly by anecdote, by the detailed reproduction of specific familiar events, and by a sometimes surprisingly suggestive juxtaposition of the contemporaneous and the ancient. The mode of treatment, of course, leaves unfortunate emphases; thus, my Lord Coke is depicted almost solely as the unconscionable prosecutor of Sir Walter Raleigh, and international law is principally treated in terms of the Alabama Arbitration. It is a book to peruse for episode or pungent opinion, but not to be taken too seriously as a representation of the current status of historical legal science. As the introduction would seem to suggest, it was written to satisfy a new urge of the "moving-picture" brain to which James indeed refers in the introduction.

HESSEL E. YNTEMA.

The Johns Hopkins University.

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Československá Vlastivěda (Czechoslovakia in All Its Aspects). Volume V, *Stát* (The State). (Prague: Sfinx-Bohumil Janda Publishing Co. 1931. Pp. 704.)

Under the auspices of the Masaryk Academy of Work of Czechoslovakia, a series of eleven monumental volumes, dealing with the new state of Czechoslovakia in her cultural, artistic, economic, political, and social aspects, is being published in Prague. The language in which these publications are written is, of course, known to very few political scientists in this country. But the academic value of the work is such that it deserves recognition abroad. The wealth of material contained in the present volume, which, in general, covers the political life and governmental structure of Czechoslovakia, can be gathered from the fact that twenty-two well-known experts collaborated in its preparation. Each article, dealing with an independent subject, has a full bibliography in various languages; and there are 678 illustrations, in addition to numerous statistical diagrams and maps.

The problem of local administration is very troublesome at the present time in Czechoslovakia. The basic local self-government unit is the commune. The organization and activity of the commune rests mainly on the communal statutes, which differ considerably in different districts. The problem of minorities is intimately connected with it. The minority may use its own language, not only in the courts of justice, but in all public offices, unless the proportion of the minority is less than twenty per cent. Recent reports regarding census-taking brought up many recriminations in Czechoslovakia and abroad.

While the whole book shows Czechoslovak scholarship at its best, it is evident that nearly all the writers are rather legalists and followers of the Austinian school than political scientists of the type of Charles A. Beard. Professor Frant. Weyr, for example, is an outstanding authority of Czechoslovakia on constitutional questions, and his chapter, dealing with that subject, is a standard theoretical treatment. Yet the application of the Czechoslovak constitution differs vastly, in some aspects, from the theory. Thus the constitution provides for a special "constitutional court," an academic body which can give a decision if asked to do so by the house of deputies, the senate, the diet of Carpathian Russia, the supreme court, the supreme administrative court, or the electoral courts. But actually not one law has been examined. Weyr, however, does not tell us this—or various other important facts.

Nevertheless, on the whole, the volume has no competitor in the field,

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and becomes *de facto* the standard work of reference for those few who are interested in the troublesome politics and changing governmental structures of Central Europe.

JOSEPH S. ROUCEK.

Centenary Junior College.

The Economic Life of Soviet Russia. By CALVIN B. HOOVER. (New York: The Macmillan Company. 1931. Pp. viii, 361.)

Russia's Productive System. By EMILE BURNS. (New York: Dutton and Company. 1931. Pp. 288.)

The Red Trade Menace: Progress of the Soviet Five Year Plan. By H. R. KNICKERBOCKER. (New York: Dodd, Mead and Company. 1931. Pp. xviii, 277.)

The Five Year Plan of the Soviet Union: A Political Interpretation. By G. T. GRINKO (New York: International Publishers. 1930. Pp. 340.)

The Challenge of Russia. By SHERWOOD EDDY. (New York: Farrar and Rinehart. 1931. Pp. x, 278.)

The Russian Experiment. By ARTHUR FEILER. Translated by H. J. Stenning. (New York: Harcourt, Brace and Company. 1930. Pp. 272.)

If American readers remain ignorant of Soviet Russia, the blame cannot be placed upon the authors or publishers. The six volumes here briefly reviewed are merely a small portion of the ever-increasing number of books dealing with the political, economic, and social conditions of that country. The Five Year Plan, as might be expected, holds the center of interest.

Professor Hoover has written a very comprehensive, impartial, and detailed analysis of the Russian economic situation, based upon his personal investigations in 1929 and 1930. Conclusions are supported by a wealth of references and statistical tables drawn from Russian and foreign sources. The author believes that the Five Year Plan has a reasonable chance of success, providing the Soviet government reverts to its original figures for increased productivity and abandons the extravagant goal which it has substituted. The "impressive" successes hitherto obtained are founded upon force and fear, which have become inseparable from Communism. The peasants are helplessly hostile; but the majority of urban workmen are loyal, since their economic condition is better than before the Revolution. If the Five Year Plan succeeds within a decade, the urban worker's standard of living will

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compare favorably with that of the more poorly paid workers in capitalistic countries. Unless in the meantime capitalism materially improves the economic condition of this class, the World Revolution will begin to make rapid strides.

Clearly, and with much detail, Mr. Burns describes the changes in the organization and efficiency of Russian industry and agriculture from 1917 to their culmination in the revised system introduced in 1930. There are separate chapters on oil, transport, municipal enterprises, coöperatives, the collectivization of agriculture, and the development of planned production.

Mr. Knickerbocker, the foreign correspondent of the *New York Evening Post,* bases his account upon the investigations made during a two months' tour of Russia in 1930. He believes that the Five Year Plan will be successful unless the dumping of Russian goods provokes an international boycott. For some years Russia will be a valuable customer, e.g., for machinery. She will become an increasingly dangerous competitor in raw materials, and eventually in industrial products.

Mr. Grinko, vice-chairman of the Gosplan, describes with tables and statistics the objectives of the Five Year Plan, as well as the progress made in the first two years. While not definitely committing himself to the statement that the Plan will be completed in four years, he is distinctly more optimistic than Professor Hoover.

The evaluation of Communist Russia by Sherwood Eddy is based on the author's personal investigations during six visits to Russia. He considers that rigorous dictatorship will continue indefinitely, and condemns Bolshevism chiefly for: (1) its complete denial of liberty; (2) its belief in world revolution as a panacea; (3) its narrow and intolerant dogmatism. Mr. Eddy considers Russian superior to American society in its social services and its elimination from society of the desire for wealth. He urges recognition of Russia and a reform of the American economic and political system.

Mr. Feiler has written an interesting account of Bolshevism, political, economic, and social, concerning himself chiefly with the period prior to 1929. He considers that the principal danger of Bolshevism to Europe is its threat to the right of individuality. "The aim of Bolshevism is . . . a collectivized man, living collectively and collectively thinking, feeling, and aspiring. And Bolshevism has already made considerable progress in fashioning this collective man."

LENNOX A. MILLS.

University of Minnesota.

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Constitutional Development in the South Atlantic States, 1776-1860. By FLETCHER M. GREEN. (Chapel Hill: University of North Carolina Press. 1930. Pp. xiv, 328.)

One of the most noticeable aspects of the great productivity of American historical scholarship during the past twenty years has been the general neglect of constitutional history. Aside from writings dealing with the formation of the federal Constitution and with the work of the Supreme Court, there have been very few studies in this field. And although these two subjects are of unquestioned importance, they are but two among many parts of the whole. The absence of any recent attempt to survey the entire course of our constitutional development is indicative of the number of problems upon which research and commentary remains to be done. The numerous surveys of almost every other phase of American history, and the many careful works dealing with English constitutional history, several of them by Americans, find no counterpart in the field of American constitutional history. Among the subjects which must receive more thorough investigation before an adequate history of American constitutional government can be written is that of state constitutional development; for, under our system, much that is essential to the growth of the political organism takes place in state constitutional conventions, legislatures, courts, commissions, and other agencies. Professor Green's competent study is a welcome addition to the slender body of material dealing with this subject-matter.

The scope of the book is somewhat more limited than its title, or even its sub-title—*A Study in the Evolution of Democracy*—might seem to indicate. It is essentially a study in the formation and reformation of the constitutions of five of the southern states. Nearly all of the space is devoted to the constitutional conventions and their work, together with a consideration of the popular movements which led to the calling of the conventions. The discussion is focussed especially upon the questions of suffrage qualifications and distribution of legislative seats, questions which were usually the storm centers in the constitutional conventions of this period. On the other hand, the interpretation of the state constitutions by the courts and the actual conduct of government agencies receive little or no attention. Within its limits, the book is very well done. The various factors—social, economic, sectional—which appear to have produced constitutional changes receive adequate analysis. It is to be hoped that similar studies for other

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groups of states will follow, and also that some of these studies will deal with such problems as the broadening scope of governmental activities and the relative parts played by the legislature, the executive, and the courts in the governments established under the constitutions.

B. F. WRIGHT, JR.

Harvard University.

The Autobiography of Lincoln Steffens. (New York: Harcourt, Brace, and Company. 1931. Two volumes. Pp. xi, 442; viii, 443-884.)

In two generous volumes well-sprinkled with entertaining pictures, Lincoln Steffens gives his impressions of mankind and its works as he has found them in more than sixty years of wandering over the face of the earth. The story opens with his boyhood days in California, the land of his birth. It then swiftly carries him through his student years at Berkeley, where he found that, philosophically speaking, nothing is known, but was inspired to continue his studies in Europe in a quest for light—at Berlin, Heidelberg, Munich, Leipzig, and Paris, always in search of a clue to something. At the age of twenty-six he returned home, he says, a beautiful thing, tailored and educated, dressed outside like an Englishman, and filled up inside with the culture of American and European universities. At that stage, he remarks, "I was happily unaware that I was just a nice, original American boob, about to begin unlearning all my learning and failing at even that."

On his arrival in New York, Mr. Steffens was greeted by a letter from his father enclosing one hundred dollars and telling him to get a job and support himself—and his wife, for he had married an American girl during his hunt for wisdom. Since there were no foundations in those days to supply a research project for an impecunious youth, Mr. Steffens launched out as a reporter on the *Evening Post*. In this employment he came into contact with Wall Street, "bulls and bears," the police, the battered and troublesome poor, Dr. Parkhurst's vice crusade, the gleaming underworld, bosses both political and financial, the Ghetto, Theodore Roosevelt as police commissioner, Schmittberger as an honest cop, crime waves, Old Bill Devery, and Roosevelt as governor. In these crowded and rattling years he found out that if nothing was known, philosophically speaking, a great many men of various morals existed and were busy pursuing curious and checkered careers. That much seemed to be so.

From the daily press, Mr. Steffens was graduated into the magazine

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world where he started anew, as managing editor of *McClure's Magazine,* just at the hour when Ida M. Tarbell was raking the Standard Oil Company and Ray Standard Baker was beginning his colorful adventures. Within a few years he had covered the shame of the cities and the subterfuges of citizens. St. Louis, Minneapolis, Pittsburgh, Philadelphia, Chicago, Missouri, Illinois, Wisconsin, Rhode Island, Ohio, Cincinnati, New Jersey, the trust factory, life insurance, timber frauds, San Francisco, Boston, and the McNamara dynamiters came under his scrutiny and were subjected to his analysis. No big men or big events of the period escaped his critical eye.

And out of his inquiries he evolved the astounding conclusion that good people were mainly responsible for the wickedness of the weary world. His thesis may be illustrated by a single allusion. A church warden, of course, would not own and collect rent from a bawdy house (although a great, rich church did actually possess some of the worst slum property in New York), but he would insist that his "investment" in a traction company should be protected against the raids of aldermen bent on squeezing out water by lowering fares. And in safeguarding his "legitimate rights" the warden would tolerate, if not actually support, a corrupt politician capable of guaranteeing that "socialistic" assaults on vested interest would be blocked. In Mr. Steffens' hands, the business of politics became infinitely complicated, and scarcely endurable to the particularly virtuous. With disconcerting and pleasing geniality, he preached his doctrine for more than thirty years.

Not content with exploring the domestic map of politics, Mr. Steffens sought adventures in foreign affairs. He went to Mexico, the land of Carranza and Madero, and on his return powerfully influenced, it seems, the Mexican policy of President Wilson. Thence to Russia. The first time, he interviewed Kerenski and brought back an important message to the president of the United States, one bearing on those mysterious secret treaties. A second time he visited the land of the Muscovite, after the kaleidoscope had turned and Lenin had been placed on the throne—a curious, fierce, quizzical man dressed in old clothes and bent on turning the world upside down.

Students of politics will find in this work new facts and weird illuminations. They will be especially entertained by the author's judgments on the mighty men of old. Roosevelt, Mr. Steffens thinks, was not a reformer in the White House; "he was a careerist on the people's side, but working to wrangle some concessions from the powers that

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be and make them do some things for the country at large." Wilson was a truly humane liberal in his own opinion, but deceived himself as to his virtues, and was hard as steel when it came to forgiving and pardoning liberals and radicals who opposed his willful course. Harding was a politician, and rumor had it that he was a sinner, but he would have granted a general amnesty to war prisoners if it had not been for the firm opposition of good men, such as Herbert Hoover and James J. Davis. There was, Mr. Steffens thinks, a certain unostentatious humanity in the sage of Marion, Ohio.

And what is the upshot? Mr. Steffens does not shrink from prophecy. Russia, he holds, is trying to make a land where men and women may earn an honest living but never hope to rise into the realm ruled by "the cunning, grasping possessors of things." The United States is headed in the opposite direction, but likely to meet Russia on the other side of the world. Surely, a strange tale, not easily simplified for proper presentation to a Sunday School class—perhaps not even to a senior college class in the science of statecraft.

CHARLES A. BEARD.

New Milford, Connecticut.

Citizenship. By CHARLES HARTSHORN MAXSON. (New York: Oxford University Press. 1930. Pp. viii, 483.)

The author of this handy manual on the general subject of citizenship sets forth in his preface his principles of inclusion and exclusion. The book is not an introduction to political science, nor is it a summary of American law designed to make one a better citizen. The student who studies it and the educator who teaches it are under lasting obligation to the author that these things are so, for nothing is so dry and uninteresting as the traditional introduction to politics, or the legal summary of the hortatory variety. Citizenship is the volume's subject, and the "status and fundamental rights" of citizens might well be the sub-title. The author has attempted a large and difficult task.

The last part of the preface suggests an opinionated author with a creed to stand upon, or a faith to confess. He states: "The author does not expect the student or reader to agree with him always, for he sometimes is not in agreement with American doctrine, but presents the world doctrine instead. But he believes mightily in law, a growing thing, not static, and in its enforcement. He believes in property and insists upon its protection. He believes in human beings and sees a vision of their progress." While it may be questioned that there are

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well-defined "American" and "world" views on questions of citizenship, the difference, if it exists, does not always appear. These beliefs seem to bring the author to grips with contradictory principles. Does the law as a growing thing imply enforcement as long as the law stands, or does it induce disobedience, as Mr. Laski contends? In standing for property and its protection, and for human beings and their progress, is not the author riding two horses which are getting farther apart? And how long could one keep his balance championing both positions? Are human rights and property rights so much the same that one may contend for both as a "belief"? These problems, suggested in the preface, are not solved in the body of the work. A prefatory confession of faith or belief does no harm so long as the author has produced a good book.

This Dr. Maxson has done. He deserves great credit for his effort to shift training in elementary political science from descriptive accounts of governments and from historical political science to the citizen and his rights and duties. We have too long discussed the shell of government and neglected its heart, which is the citizen. Dr. Cleveland has provided a good text on *American Citizenship*. Dr. Maxson's book provides an excellent text on citizenship in general. The two, taken together, may be regarded as a new departure in political science instruction. The defects of the book are obvious, and grow out of the difficulties of the undertaking. The topics chosen seem to be the important and necessary ones. There is not room to say much about any one subject, so large is the range of the book. A table of cases is appended, long enough for a substantial treatise on constitutional law. In a general work, the leading cases which really establish the law would be more acceptable. It is questionable whether the legal principles discussed can be comprehended by beginning students, even when treated in an elementary and simple manner. The author has done much to make them intelligible to the average reader.

CHARLES E. MARTIN.

University of Washington.

Marriage and the Civic Rights of Women. BY SOPHONISBA P. BRECKINRIDGE. Social Service Monographs: Number Thirteen. (Chicago: University of Chicago Press. 1931. Pp. xi, 158.)

The author of this monograph has produced a timely and authoritative study of a complicated question. Miss Breckinridge has confined

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the discussion to three important aspects, and in so doing has clarified the approach to the problem. The first topic considered is the attitude of the United States as expressed in the two Cable acts and in certain decisions of the federal courts; the second, the opinions and views on the subject of a number of women in Chicago whose status has been determined by that legislation; and the third, the proposals of the women's organization with reference to the Hague Conference. Under the first topic, Miss Breckinridge has skillfully treated the subject of domicil for married women in its relationship to the general principles of domicil and citizenship. She vitalizes the discussion by applying these principles to concrete issues, thereby emphasizing the necessity of changing the law to meet the needs of married women, especially those relating to the foreign-born wife.

A clear exposition is given of the Cable Act of 1922 and the subsequent steps in the movement to give independent nationality to married women. This proceeded with the revision of the 1922 Cable Act and the enactment into law of the second Cable Act on July 3, 1930. This, says Miss Breckinridge, eliminates "some of the discriminations that surround the original Cable Act;" but she declares that it does nothing to "remedy the situation of foreign-born women marrying American citizens who by the act of marriage forfeit their nationality of origin without acquiring a new nationality. The woman without a country will still exist, as will women with two countries." The situation, Miss Breckinridge avers, calls for international action.

The monograph then proceeds to record the efforts of the International Alliance of Women for Suffrage and Equal Citizenship to secure independent nationality for married women, and further describes the various activities which led finally to the League of Nations conference at The Hague in March, 1930. The American delegation found itself unable to sign any of the articles agreed upon by other nations at this conference, but proposed the following: "The Conference recommends to the study of governments the principle that in their law and practice relating to nationality there shall be no distinction based on sex, with particular consideration of the interests of children involved in the application of that principle."

Part II of the monograph is devoted to the application of the Cable Act to the foreign-born women of Chicago. The results of many individual interviews are recorded, and Miss Breckinridge concludes that "it seems clear that nowhere except possibly among some English

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residents is it suggested that prestige is gained by remaining alien. Practically every wife who remains alien does so because she either cannot or thinks that she cannot successfully meet the tests applied by naturalization officials.''

FANNIE FERN ANDREWS.

Boston, Massachusetts.

The Foreign Relations of the Federal State. By HAROLD W. STOKE. (Baltimore: The Johns Hopkins Press, 1931. Pp. vii, 245.)

With the exception of a few isolated articles, and some general discussions in the texts on federalism, practically no attention has been paid to this problem by students of government. Perhaps it is because its most baffling aspects in relation to the treaty power have arisen acutely only since 1920, with respect to international labor (and other) conventions—though the Bern conventions as to the use of white phosphorous and the night work of women date back to 1906.

After a discussion of the nature of the federal state, the position of member-states, and the control of foreign relations, the author divides the problem into three main sections: the treaty-making power and the territory of the federal state, together with its competence to make international agreements affecting its own powers; the effect upon the treaty power of the reserved powers of the member-states; and the capacity to carry out international obligations by reason of the division of powers between central and state governments.

The author has brought together a good deal of material from scattered sources concerning all the federal states except Austria. Chief reliance is placed, for countries other than the United States, and to a less extent Canada and Australia, upon the relevant constitutional prescriptions. In relation to the reserved powers of member-states—likely to be for a good while to come the most difficult problem, practically and theoretically, in the exercise of the treaty power—the author hardly touches upon the important executive and judicial pronouncements regarding international labor conventions in Canada and Australia. For the United States, the case of Missouri v. Holland (252 U.S. 416) is relegated to a footnote (p. 117) and a discussion of a few lines (p. 111) which omits to point out that the lower federal courts had held an identical statute void when passed by Congress under the commerce power. It is brought out, however, that the influence of the member-states upon foreign policy in all the federal states is greatly

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enhanced by the existence of these reserved powers. Austria is the only state which has attempted to resolve the problem by constitutional prescription (Art. 16), and it would have been interesting to learn the author's opinion as to the efficacy in theory and practice of the Austrian formula.

In the enforcement of its international obligations, likewise, the federal state finds some difficulties resulting from the form of government. Theoretically, these appear greater in the United States than in any other federal state; the other constitutions provide for federal enforcement of international obligations, either directly or through state administrative and judicial agencies. In the United States, the federal organization, as realized in the national constitution, "admirably avoids international difficulties. When they do occur, [they] are often cleared up, or at least relieved, by the amicable exhortations of the central government or by the good-will of the states (p. 151)."

This pioneering venture into an important hinterland of international law and constitutional theory is a welcome contribution to the discussion of a problem which is rapidly becoming one of first-rate practical importance in the drafting and enforcement of a wide variety of international conventions.

PHILLIPS BRADLEY.

Amherst College.

Tacna and Arica: An Account of the Chile-Peru Boundary Dispute and of the Arbitrations by the United States. By WILLIAM JEFFERSON DENNIS. (New Haven: Yale University Press. 1931. Pp. xviii, 332.)

The author's personal knowledge of Peru, Chile, and Bolivia enables him to make this survey unbiased and readable. Two-thirds of the book is devoted to history before the Coolidge award of 1925. The gradual pushing north by Chile to absorb her neighbors' guano and nitrates, and the backing given her in this by nitrate interests, European and South American, is excellently told. The account of efforts of the United States to end the War of the Pacific throws light on a curiously little-known passage of our diplomatic history.

The dispute since the Treaty of Ancon of 1883 is less carefully related. No account of the negotiations between Chile and Peru from 1893 to 1922 regarding the conditions for the plebiscite to be held under the treaty is attempted.

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The author considers that the Treaty of Ancon stipulated a plebiscite in 1894, as Peru contended, and not any time thereafter, as Chile argued, and that the adoption by the Coolidge award of the latter interpretation was disingenuous, and the award too legalistic. He omits to stress, however, the chief cause of the failure of the plebiscite which it required, namely, that it did not remove the Chilean troops and give the plebiscitary commission control over the administration of the area. One would welcome a discussion of whether some degree of "neutralization" was possible under the terms of submission of the dispute to the arbitrator.

The story of the attempted plebiscite, told largely from newspaper files, is readable but incomplete, and contains various inaccuracies. The whole story would require many more pages and a laborious piecing together of the Edwards and Pershing memoranda. Nevertheless, the book gives a good general impression of the atmosphere of violence which caused the plebiscite to be abandoned.

SARAH WAMBAUGH.

Cambridge, Massachusetts.

Gaiko Yoroku [*Diplomatic Record*]. By VISCOUNT KIKUJIRO ISHII. (Tokyo: Iwanami Shoten. 1930. Pp. 526.)

This book has attracted considerable attention, both in Japan and abroad, largely because few Japanese diplomats of Viscount Ishii's standing have written books of this nature. For good or ill, Japan still belongs to the diminishing number of powers whose statesmen deem it indiscreet to write memoirs, and whose diplomatic documents are securely locked up in the vaults of the Foreign Office. Naturally, this volume is not exactly a book of memoirs as the West understands the term, but it gives us something of an inside view of Japan's diplomatic dealings with which the author has directly or indirectly been identified. Viscount Ishii, now privy councillor, made his career entirely in the diplomatic service, having been foreign minister, war-time special envoy to the United States, ambassador to Washington and to the Quai d'Orsay, and for years Japan's representative in the Council of the League of Nations.

The book is divided into two parts. Part I, entitled "General Idea of Japan's Diplomacy," touches upon the high lights in Japan's foreign relations—the Sino-Japanese war and its aftermath, the Anglo-Japanese Alliance, the war with Russia, the World War, Japan's

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"special position" in China, the League of Nations, etc. The author's account of the Anglo-Japanese Alliance and his defense of the Ishii-Lansing agreement relative to Manchuria are interesting. Part II is devoted to the author's "Personal Views of Diplomacy," with chapters on "Diplomacy and Propaganda," "The League of Nations and the Alliances," "Diplomacy Old and New," "International Conferences," "The Population Problem," etc. Here and there the book shows a flash of liberalism, but on the whole the interpretation of Japanese diplomacy is conventional and can hardly satisfy the younger Japanese of the liberal school.

K. K. KAWAKAMI.

Washington, D.C.

The Development of Local Government. By WILLIAM A. ROBSON. (London: George Allen & Unwin, Ltd. 1931. Pp. 362.)

To many American students, the welter of English local government authorities—parish councils, rural and urban district councils, non-county borough councils, county borough councils, and county councils—probably appears even more perplexing than our own chaos of jurisdictions. To Mr. Robson it seems high time that a change was effected. With the aid of several recent parliamentary investigations, he demonstrates conclusively the inability of the present structure to meet modern administrative problems. The essential difficulty is the existence of too many small areas, without population or resources sufficient to cope with problems of land drainage, water supply, public utility services, public health, education, planning, housing, etc. The only way to avoid extreme centralization, and at the same time provide for efficient administration, Mr. Robson believes, is to enlarge the units of local authority. Parish councils, rural and urban district councils, and non-county borough councils should be abolished. County-borough status should be more freely granted, and the administrative counties should be organized on a more logical basis. The guiding principle is that there should be not more than one local jurisdiction in a given area, although some decentralization of administration is thought desirable. Administrative problems transcending the boundaries of individual boroughs and counties could be dealt with by joint committees, acting under the supervision of national authorities.

Although the major portion of the book is devoted to criticism of the structure of local government and suggestions for a complete reor-

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ganization, there are interesting chapters on other subjects. A larger measure of home rule for municipal corporations is advocated, through the elimination of the doctrine of *ultra vires*. Studies in the field of public health administration, the civil service, and the local audit bring to light defects in the existing situation and lead to concrete suggestions for reform.

Mr. Robson merits more than the casual praise due the author of an exceptionally good book. This work, following upon his *Justice and Administrative Law*, reveals him as an authority in the field of English administration and as an artist of the highest rank in the field of constructive criticism.

HUGH L. ELSBREE.

Harvard University.

Mastering a Metropolis. By R. L. DUFFUS. (New York: Harper and Brothers. 1930. Pp. xiii, 301.)

This work is primarily an attempt to restate in brief and popular form the vast accumulation of data and the far-reaching recommendations embodied in the volumes published by the Regional Plan of New York and its Environs. It is, however, considerably more than a cool and dispassionate summary of the scientific conclusions of the reports in question. It is distinctly an attempt to "sell" the plan to the inhabitants of the New York region. The early part of the book is occupied with the general principles of city planning and the background of the New York situation as a foundation for the more specific recommendations of the later chapters. The style is easy, the exposition clear. There is no attempt to make any original contribution. The general parts of the book contain nothing that is not already commonplace to most of the readers of the *Review*, and for any thorough appreciation of the recommendations of the Regional Plan of New York and its Environs, one must go to the publications of that body and the maps which accompany them. Mr. Duffus has, however, done his job well. He has presented an entertaining book which the lay reader can consume without a headache. It will make acceptable supplementary reading for high school seniors and college freshmen.

There is one quality about Mr. Duffus's work which is not characteristic of the factual reports and scientific recommendations of the professional staff of the Regional Plan of New York and its Environs. Their cold-blooded estimates of the probable growth of New York become in Mr. Duffus's propagandist hands almost boastful assumptions

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of her future greatness. A non-New Yorker cannot read some of his chapters without wondering whether the great need of the future is not going to be some national planning movement which will prevent the swelling of New York to such vast proportions (twenty millions in the region by 1965) by diverting some of the commerce of the interior to other Atlantic seaports. The United States as a whole cannot afford to become a mere hinterland for one excessively great city. Some of its prospective trade, industry, and population might well be more economically disposed at other points.

THOMAS H. REED.

University of Michigan.

America's Way Out. By NORMAN THOMAS. (New York: The Macmillan Company. 1931. Pp. 315.)

Questions of the Day. By JOHN A. RYAN. (Boston: The Stratford Company. 1931. Pp. 331.)

"One of the oldest and perhaps the noblest of human aspirations has been the abolition of poverty," said Mr. Hoover in his speech of acceptance. "We in America today are nearer to the final triumph over poverty than ever before in the history of any land." Less than two years after these noble words were penned, we found ourselves in the midst of one of the worst economic depressions in our history—with hunger, privation, and despair running rampant in a land which in 1928 seemed flowing with milk and honey, a land where leaders confidently predicted that all could be rich, and where, in Mr. Hoover's words, "the poor-house is vanishing from among us."

We are confronted with an alarming paradox. Millions are hungry, because our warehouses and granaries are bursting with food; cold and homeless, because our machines have made too much cloth and building material. This, in spite of the fact that there is now, as Mr. Thomas insists, "no longer any external excuse for poverty."

Is there a way out? Can we stand the strain of a mechanical civilization, or must we destroy this Frankenstein—the machine—before it engulfs us in universal disaster? Unlike William Morris and other Utopians, Mr. Thomas would not revert to a medieval policy. "Even so rabid a medievalist as Ralph Adams Cram," he says, "would like to take modern sanitation into his walled towns. . . ." Our present predicament is "not the fault of the machine so much as our use of it."

Mr. Thomas looks to the future, not to the past. Socialism offers a solution because it, more than any other proposal, provides us with "a

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philosophy, a program, and an organization equal to the task. . . . The corner-stone of that philosophy is the absolute necessity of planned control of the resources and machinery of the world in the common interest if we are to avoid disaster, to say nothing of achieving plenty, peace, and freedom." Plan—plan or perish—is the thesis of Mr. Thomas' book. We no longer dare to drift; the time to assert mastery has come.

Those who continue to speak in the eighteenth-century language of rugged individualism fail to see the handwriting on the wall. "When we went in for machinery we went in for collectivism, and that on a world-wide scale." Today the individual is helpless in the face of the monster that he has conjured from the inventor's flask. He is dependent on persons he does not know and forces he cannot see.

The time is overripe for positive state action in achieving the good life. "The state," says Mr. Thomas, "is valuable not as a mysterious sovereignty but as a useful organization for serving the collective interests of men." Our government must be revamped so that it will cease to be what Chief Justice Hughes described in 1928 as "the most successful contrivance the world has ever known for preventing things from being done."

Mr. Thomas rejects communism of the Russian variety. He is not indifferent to the Bolshevist achievements, and is mildly enthusiastic concerning the Five Year Plan. But the militaristic psychology—the denial of liberty—and the religious fanaticism of the professional communist he finds distasteful. Likewise, he rejects the new capitalism, on the ground that we cannot plan socially for an economic order that is privately owned. Nor can we effectively achieve economic democracy under an industrial dictatorship, however benevolent it may be. At heart, Mr. Thomas remains a social democrat of the left.

Dr. Ryan's book is a collection of essays on some insistent problems of the day. Many of the discussions have appeared elsewhere, and are no doubt familiar to the readers of this *Review*. The essays deal with prohibition, Catholics and politics, and economic questions, in addition to some miscellaneous articles on Catholicism and liberalism, birth control, evolution, and Mr. Hoover. To those unfamiliar with the philosophy of Catholic liberals, this book is unreservedly commended. Dr. Ryan's pen is a competent servant to a keen, kindly, and fertile mind.

PETER H. ODEGARD.

Ohio State University.

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The American Government of Today. By WILLIAM STARR MYERS. (New York and London: Harper & Brothers. 1931. Pp. viii, 556.)

In the space of 556 closely packed pages, the author of *The Republican Party* and *American Democracy Today* surveys for us the entire field of American government—national, state, and local. For the most part, the organization is along conventional lines; but the permanent detached departments of the national government are given special consideration, and in a final chapter Professor Myers ventures some criticisms and suggestions for the future. On the whole, the emphasis is upon the political rather than the administrative aspects of government, and upon the way the machine works rather than the functions it performs.

At times, the author has condensed factual material to such a point that unfortunate implications are likely to be drawn. The description of the federal corrupt practices act of 1925 (p. 91) leaves the impression that a candidate for United States senator may spend $10,000 *plus* an amount equal to three cents for each vote cast at the last general election for that office, and makes no mention of the important exceptions to the limitations fixed. Again (pp. 357-358), the author implies that permanent registration of voters has been discredited and discarded in the United States today.

In his preface, Professor Myers disclaims any desire to set forth original theories of government or to further any propaganda. He does not, however, avoid statements of opinion on controversial questions to which some of his readers will take exception. Is it quite fair to state that "the Constitution in reality can be amended with adequate ease and with the speed necessary for real public needs" (p. 39); or that "President McKinley, forced by congressional action, was compelled to enter upon the Spanish-American War in 1898" (pp. 277-278)? Many will feel, too, that the author's discussion of the position of the Supreme Court in our scheme of government avoids the real issue (pp. 262-267). Present-day criticism of the Court is directed at the conservative rather than the partisan bias of the judges.

Throughout this volume the author keeps constantly before him the goal of picturing our political institutions as they are. In carrying out this aim he uses many fresh illustrations. For example, there is a description of "Housekeeping at the White House" (pp. 110-111); Maclay's amusing account of a very dull dinner given by President Washington (pp. 132-133); and some excellent material on the relation

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of the president to the press and to the public (pp. 137-139). Teachers and students of American government owe Professor Myers a debt of gratitude for this illuminating material.

LOUISE OVERACKER.

Wellesley College.

The Case of Frank L. Smith; A Study in Representative Government. BY CARROLL HILL WOODDY. (Chicago: The University of Chicago Press. 1931. Pp. x, 393.)

Professor Wooddy has given us a really brilliant and realistic analysis "of the business of politics as it is actually conducted in a representative American commonwealth." The study goes much farther than its title indicates, for the person of Frank L. Smith is swallowed up in the broader, deeper, more fundamental analysis of party life in Illinois during the past thirty-five years.

The author did yeoman service in elucidating the maze of Chicago politics in his *Chicago Primary of 1926,* but he has now made an even more significant contribution to the study of representative government. In many ways, *The Case of Frank L. Smith* is better than Frank Kent's much-used *Great Game of Politics.* It is as well written, it is far more thorough and painstaking, and it gives one as realistic a picture of political life. Dr. Wooddy, in achieving this goal, has presented the career of Frank L. Smith "as a case history of a political personality whose experiences involved many, if not all, of the problems and procedures essential to the achievement of representative government in an American commonwealth." Inasmuch as the career of this man included an incident of great national interest and importance, the book presents us with a very clear and useful review of the Smith case before the United States Senate, and all the collateral issues. Included also are splendid brief biographies of some of the bigwigs of Illinois politics: Lorimer, Small, Lundin, and Deneen. These "associates" of Smith are deftly carried along through the whole picture and serve to make it more interesting.

The analysis of the Smith campaign of 1926 is a good instance of careful interpretation, and Appendix V, which is a statistical study of Illinois elections *a la* Chicago, is a useful application of the quantitative method to data which were susceptible of such treatment.

Inasmuch as the basic difficulty between Smith and the Senate concerned the collection and use of money, these matters are treated ex-

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haustively. Furthermore, Dr. Wooddy's discussion of campaign funds and their regulation, arising out of this Illinois experience, is sound and very much to the point. The book is effectively illustrated with a collection of newspaper cartoons, and the verdict of the country on the Smith case is well summarized in a chapter which presents the editorial opinion of the nation's important newspapers.

JAMES K. POLLOCK.

University of Michigan.

Encyclopædia of the Social Sciences. By EDWIN R. A. SELIGMAN, Editor-in-Chief, ALVIN JOHNSON, Associate Editor, and others. Volumes I-III. (The Macmillan Company. 1930. Pp. xxvii, 646; xxvi, 696; xxi, 681.)

The first three volumes of *The Encyclopædia of the Social Sciences* furnish a sufficiently large sample to indicate the scope and quality of a most ambitious and worth-while undertaking. The aim of this review is to note the general plan of the work and the nature of the contents of the early volumes; a later review, to be written after the series has been completed, will survey and evaluate the work as a whole.

The idea of a publication which would coördinate the social sciences, had its beginning in 1923 when Dr. Alexander Goldenweiser and Dr. Howard B. Woolston, of the American Sociological Society, obtained the adoption of a resolution by that organization favoring such a project. In 1924, six other learned societies in the field of the social sciences became interested, a joint committee representing the various societies was appointed, with Professors W. B. Munro and John H. Logan as representatives of the American Political Science Association, and eventually an executive committee was established under the chairmanship of Dr. Edwin R. A. Seligman to work out the details of a "comprehensive and unifying publication." After careful consideration, it was decided to carry out the ideas of the joint committee by preparing an encyclopædia. Dr. Seligman became editor-in-chief, and in 1927 the work was started with the following ten constituent societies as sponsors: American Anthropological Association; American Association of Social Workers; American Economic Association; American Historical Association; American Political Science Association; American Psychological Association; American Sociological Society; American Statistical Association; Association of American Law Schools; National Education Association.

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In the preparation of the *Encyclopædia,* Dr. Seligman has been aided by Professor Alvin Johnson as associate editor and Max Lerner as managing editor, by a group of seven assistant editors, and by seventeen advisory editors from America and eleven from foreign countries. The American advisory editors represent the various social sciences, and include Alfred L. Kroebe for the field of anthropology; Edwin F. Gay, Jacob H. Hollander, and Edwin G. Nourse in economics; Paul Monroe in education; Sidney B. Fay and Arthur M. Schlesinger in history; Roscoe Pound in law; John Dewey in philosophy; Charles A. Beard and Frank J. Goodnow in political science; Floyd H. Allport in psychology; Porter R. Lee in social work; William F. Ogburn and W. I. Thomas in sociology; and Irving Fisher and Walter F. Willcox in statistics. The foreign advisory editors have been chosen to represent various countries rather than fields, and include for England, Ernest Barker, John Maynard Keynes, Sir Josiah Stamp, R. H. Tawney; for France, Charles Rist, F. Simiand; for Germany, Carl Brinkmann, H. Schumacher; for Italy, Luigi Einaudi, Augusto Graziani; and for Switzerland, W. E. Rappard. A careful study of the list of distinguished editors is sufficient to indicate the high quality of the undertaking, an opinion which is strengthened by a perusal of the list of editorial consultants and contributors which contains the names of practically all of the leading authorities in the social sciences.

The *Encyclopædia* attempts to include all of the important topics in the purely social sciences, such as politics, economics, law, anthropology, sociology, penology, and social work. "History is represented only to the extent that historical episodes or methods are of especial importance to the student of society." As explained by the editor-in-chief, the work obviously cannot "go so much into detail as would be possible for a series of works dealing with each separate science. Intensive treatment of this kind would be inappropriate, because the real object of the *Encyclopædia* is not so much to exhaust each particular subject as to bring out in the respective topics the relations of each science to all of the other relevant disciplines." In the case of "the semi-social sciences—ethics, education, philosophy, and psychology—it becomes necessary to select those topics of which the social aspects are acquiring increasing significance. This is still more true of what we have called the sciences with social implications, like biology and geography on the one hand, and medicine, philology, and art on the other. It is, how-

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ever, precisely the social aspects of these sciences which have come to the front in recent years, and which it is especially important to emphasize. The proper treatment of the more or less outlying fields which have never yet been comprised under the head of social sciences, but which it now becomes necessary, or at all events desirable, to include, is one of the most difficult questions that has confronted the editors. Moreover, the requirements of a work which seeks to coördinate the various social sciences and to indicate their relations to the general movement of thought involve the inclusion of many topics not usually treated in the special encyclopædias." In fact, the underlying aim of the *Encyclopædia* is to break down the barriers between the different social sciences and to provide a synthesis of the various fields.

In order to give greater unity to the material, the first volume contains an Introduction of 350 pages, divided into two parts. The first part includes an excellent article on the meaning of the social sciences, by Professor Seligman, and a detailed history of their development according to periods, the aim of which is to explain "the filiation of the social sciences and their contemporaneous relationship, as well as their dependence on the institutional and general intellectual situation" of each period. "Greek Culture and Thought" is covered by W. L. Westermann; "The Roman World," by Tenney Frank; "The Universal Church," by Bede Jarrett; "The Growth of Autonomy," by E. F. Jacob; "Renaissance and Reformation," by F. J. C. Hearnshaw; "The Rise of Liberalism," by Harold J. Laski; "The Revolutions," by Crane Brinton; "Individualism and Capitalism," by Charles A. Beard; "Nationalism," by Carl Brinkmann; "The Trend to Internationalism," by R. M. MacIver; and "War and Reorientation," by the editorial staff.

A brief analysis of the last-mentioned article will serve to illustrate more clearly the nature of the material presented in the initial part of the Introduction. First, the institutional and intellectual background of the war years and of the post-war period is discussed, with special reference to its influence on new trends of thought, concepts, and relationships in the social sciences. The editors explain how the war, which at the outset disorganized or weakened creative thinking and abstract ideas, was followed by a short outburst of idealism or optimism, and then, as the reaction set in, by a period in which emphasis was placed on actualities and pragmatism. All of this helped to break down the boundaries between the social sciences, and led to new meth-

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ods of research, interpretation, and integration. Next follows a section on psychology, which is introduced by the statement that "the social sciences were probably more profoundly affected by the development and diffusion of psychological doctrine than by any other single influence which touched them. . . . No scheme of social reform could be launched without close survey from the 'psychological approach.'" Then come sections on new developments in geography, anthropology, economics, political science, law, and history. The article concludes with a section on the interrelation of the social sciences in which integration is stressed as the dominant trend. "The divisions between the sciences," write the editors, "while retaining their significance as designations of the distinctive interest and approach of each, became irrelevant as actual working rules. If a problem was to be analyzed or an institution studied, its ramifications into every phase of activity defeated the boundaries of the sciences."

The second division of the Introduction contains "an account of the social sciences as disciplines, in their historical development throughout the world." There are articles on the social sciences as fields of study in Great Britain, by E. M. Burns; France, Belgium, and Romanic Switzerland, by Henri Lévy-Bruhl; Germany, by Edgar Salin; Austria and Hungary, by Theo. Surányi-Unger; Italy to the End of the World War, by Augusto Graziani; Italy under Fascism, by Herbert W. Schneider; Imperial Russia, by Peter Struve; Soviet Russia, by M. Pokrovsky; Scandinavia, by Bertil Ohlin; Spain and Portugal, by Ferdinando de los Rios; Latin America, by L. L. Bernard; Japan, by Teizo Toda; the United States, by L. L. Bernard. These articles discuss the development of the social sciences in the universities, the establishment of learned societies and journals, the outstanding authorities, and the important books in the various fields.

The Introduction as a whole constitutes a very satisfying and interesting history of the social sciences and of their intellectual and institutional background. It would be highly desirable if this portion of the work could be published separately, provided such a plan would not interfere with the success of the larger undertaking. The value of such a volume for courses in the history of political thought is evident.

The remainder of the first three volumes of the *Encyclopædia* is devoted to articles on subjects from "Aaronson" to "Commentators," varying in length from a few paragraphs to articles of ten or twenty thousand words, and written by well-known authorities in their respec-

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tive fields. Each article is accompanied by a carefully selected list of references for further consultation, and there are numerous cross references to other portions of the work. The articles cover not only all important topics in the various social sciences so far as the alphabetical progression has advanced but also brief biographical sketches of persons now deceased whose works have been of importance in the several sciences.

The editors of the *Encyclopædia* and the contributors to the first three volumes are to be congratulated on giving such an auspicious beginning to a work which should prove invaluable to teachers and students of government and of the social sciences in general. Outstanding among the merits of the undertaking, as indicated by the initial volumes, are the comprehensiveness of the work, the generally high quality of the material that is presented, the thoroughness with which the interrelations of the social sciences are brought out, and the unity of the material. Since the *Encyclopædia* fills such a long-felt need, it is hoped that the editorial staff will proceed toward the completion of their task as rapidly as is consistent with the maintenance of the standard which they have established.

A. C. HANFORD.

Harvard University.

BRIEFER NOTICES[1]

AMERICAN GOVERNMENT

The American Year Book: A Record of Events and Progress, 1930, edited by Albert Bushnell Hart and William M. Schuyler (The American Year Book Corporation, pp. xxiv, 887), like its predecessors, devotes almost one-third of its pages to data that are primarily concerned with American government, under the headings of American political history, international situations affecting the United States, national government, state government, municipal government, territories and spheres of influence, public finance and taxation, public resources and utilities, defense and armaments. The list of contributors and their special topics is too long to present in full, but mention may be made of a few who are well known to readers of the *Review,* such as Arthur W. Macmahon, on "Congress and its Functions," and "Sig-

[1] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring and Dr. Rupert Emerson.

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nificant Federal Legislation;" James Hart, on "The President and his Policies," and "National Statesmen;" Lloyd M. Short, on "Federal Administrative Commissions;" Howard L. McBain, on "The Supreme Court and Constitutional Law;" T. N. Hoover, on "The Elections of 1930;" Denys P. Myers, on "United States Treaties;" Irving Fisher, on "The Prohibition Controversy;" John M. Mathews, on "The United States and World Affairs," "The London Naval Conference," "National and Interstate Relations," "State Legislatures and Legislation," "State Executives and Departments," and "State Administration and Judiciary;" Frederic H. Guild, on "State Constitutions, Referenda, and Initiatives;" Graham H. Stuart, on "Latin-American Relations;" A. H. Lybyer, on "Oriental and Near Eastern Relations;" Milton Conover, on "Personnel of Congress and of the Administration;" Clinton Rogers Woodruff, on "Federal Civil Service," "City Politics," "Types of Municipal Government," etc.; Charles W. Eliot, 2nd, on "Metropolitan and Regional Planning;" O. C. Hormell, on "County and Rural Government;" and A. E. Buck, on "The National Budget." The remainder of the volume, dealing with topics of every possible description arranged under the headings of economics and business, social conditions and aims, science and humanities, contains information which, although not primarily concerned with government, is often closely related thereto. This is a reference work which should be accessible to every teacher and student of American government.

In *Federal Financing; A Study of the Methods Employed by the Treasury in its Borrowing Operations,* by Robert A. Love (Columbia University Press, pp. 240), the technical features of Treasury borrowing are traced through their various appearances in American history. Since it is devoted to these technicalities, the book lacks the journalistic interest of Noyes, the encyclopædic character of Bolles, the compact details of Dewey, and the penetrating qualities of Kinley. The style is dull, as befits technicalities, and few new facts are produced. Yet, by collecting and concluding from not easily noticeable details, Dr. Love has advanced a thesis which makes a real impact on the student's mind. It is that the Treasury has hurt itself by failing to borrow on a business basis. Political considerations have made a low rate of interest desirable. To market securities at low rates, allurements of tax exemption, convertibility, receivability and redemption, and the currency value of securities have been used to entice investors. In many cases, notably a convertible stock issue of 1814, the government has paid dearly for this policy. More statistical proof, if obtainable, would

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be valuable, but the point is almost driven home with keen discussion of many loans. *Federal Financing* is a first-class study in public finance and an interesting review of administrative policy.—C. S. B.

Rights of Aliens Under the Federal Constitution (Capital City Press, Montpelier, Vt., pp. 153), by Norman Alexander, is a doctoral dissertation presented at Columbia University. In four chapters, the author considers the scope of federal power over aliens, the constitutional rights of aliens in exclusion and expulsion proceedings, the civil rights of aliens which are protected by the federal constitution, and the due process secured to aliens by that instrument. The study has been well executed, is satisfactorily documented, and was worth the labor expended on it. In the matter of due process, Mr. Alexander stresses the well-known difficulties arising from the fact that the national government often finds itself charged with responsibility but lacking in power; and he sees "no immediate hope that this situation will be righted."

United States Government Publications (pp. 329), written by Anne Morris Boyd and published by the H. W. Wilson Company, though prepared primarily for the assistance of librarians in handling government documents, serves at the same time as a very useful source of information for the student using publications of the federal government. The arrangement, the indexes, and the distribution of these documents are explained, and then the particular publications of the various branches of the government are described. The work is systematically arranged and provides an admirable reference book.

Another echo of Frederick J. Turner's frontier theory is heard in *The Birth of the American People*, by James Morgan, published by the Macmillan Company (pp. xi, 335). The American people, the author states, were born in a log cabin and cradled in the covered wagon. "Scratch an American even today and you will find a frontiersman." It is hazarded that if one were to scratch the author of this book a narrator of bed-time stories might be discovered. The present work, written in a rather startling colloquial manner, describes with embellishments the period from the discovery of America to the defeat of Cornwallis.

FOREIGN AND COMPARATIVE GOVERNMENT

It is impossible within the scope of a brief review to give a full appraisal of the following books on India. E. Thompson's *Reconstructing India* (The Dial Press, pp. 396) is an unbiased historical and po-

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litical account of the Indian problem. Although contributing nothing distinctly new, it is a reliable and comprehensive survey for the general reader, even though one might differ from some of the conclusions. [E.g., refreshing though it is in this latest phase of hero-worship, his evidence of Gandhi's "one moral flaw," i.e., "love of power" (p. 143), is by no means convincing]. H. T. Muzumdar's pamphlet, *India's Non-Violent Revolution* (India Today and Tomorrow Series, No. 1, pp. 63), can be dealt with summarily; it is a straightforward piece of nationalist propaganda which, as such, gives interesting information on the latest stages of Gandhi's campaign, told by one of his loyal followers with a great amount of moral pathos, and therefore probably serving its purpose with a certain public. From the point of view of political science, the following studies should be taken much more seriously. All of them serve directly and indirectly to clarify the constitutional issues for a new federal India. After a fashion, the political aim of adjusting the conflicting interests of the component parts (and more especially that of the states) and the federated whole of the future body-politic is their common denominator. *Problems of Indian States* (Aryabhusham Press, Poona City, pp. 177), by A. B. Latthe, diwan (chief minister) in one of the states, is to be particularly commended for its candid and courageous handling of a rather delicate matter. Unfortunately, the author's stimulating comments on the classification of the states (one of the most difficult questions, in view of the problem of representation in federal bodies), on the implications of federation, and also on the controversy over relations between states and crown cannot be discussed here. In a treatise by Colonel K. N. Haksar and K. M. Panikkar, *Federal India* (Martin Hopkinson, London, pp. 211), the authors, both of whom have been intimately connected with Indian states' affairs,[2] set out to discuss "the organic union of the sovereign states of India with the British Indian government." This is largely a comparative study of foreign constitutional devices for the adjustment of centrifugal and centripetal forces in a federal polity. Although the validity of the comparisons sometimes appears slightly doubtful to the reviewer (*cf.* p. 56 ff on Imperial Germany), their conclusions (p. 144 ff) deserve attention, as they probably reveal, to a certain extent, official hopes and fears en-

[2] It is well to remember Mr. Panikkar's earlier writings: *Indian States and the Government of India* (1927); *The Working of Dyarchy in India* (pen name, Kerala Putra) (1928); *The Evolution of British Policy towards the States* (Calcutta, 1929).

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tertained in the states. Even so, political postulates should not be presented in the guise of constitutional maxims which are, to say the least, doubtful, such as the authors' statement that one of the "essential conditions of federalism" is "that the central authority should have authority only in those matters which are expressly placed within its control" (p. 146). It may be added that the traditional attribution of some kind of sovereignty to the component parts of the federation will not help to diminish potential friction. Despite such minor criticism, the book doubtless will be a stimulus to constructive thought. *The Indian States; Their Status, Rights and Obligations* (Sweet and Maxwell, London, pp. 234), by Mr. D. K. Sen, who is connected with the "foreign ministry" of Patiala, of which Professor L. F. Rushbrook Williams used to be the head, is a scholarly inquiry into "the exact juristic character of the Indian states, and their rights and obligations vis-a-vis the Crown." Notwithstanding a few quarrels this reviewer would like to settle with the author, he is convinced that this is a very thorough statement of the case for the princes which no student of Indian affairs will be able to pass by in the future. In particular, the author's demonstration of the variety of legal status prevailing among the states (thus proving the need of reclassification) is highly commendable. This is another able piece of evidence that this status is by no means of an uncontroversial nature at the present—which goes to show that the future demands less juristic analysis than constructive statesmanship.—W. H. K.

The Macmillan Company has published a good translation of Eugen Diesel's admirable book, *Die Deutsche Wandlung,* under the somewhat inane title *Germany and the Germans.* The son of the famous engineer has given in the form of most readable, and often witty, essays a panorama of Germany which is fascinating even for a German. To anyone who believes that the study of political institutions depends for a realistic appreciation of its limitations upon a full recognition of the deviating geographical, ethnological, social, and cultural factors, Diesel's essay will prove a most valuable guide when dealing with Germany. While the riddle of German "national character" is not solved in these pages, its constituent elements are shown with sufficient clarity to indicate the general trend. In Books I-III, entitled "The Country," "The Towns," and "The People," respectively, Diesel explores these fields. In his book on the people, he gives succinct characterizations of what the translator has rendered as races *(Stämme)* of

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Germany, the Swabians, Bavarians, Lower Saxons, Franks, and Eastern Germans. The expression "tribes" would have been perhaps even more suggestive, as well as more accurate in treating the singularly distinct subdivisions of the German people. In the last two parts on "Work," "Education and Religion," and "The New Germany," there are chapters on the civil service, the political parties, the *Vereine* (associations), and the churches, as well as on the new German youth, which will interest students of political institutions, even though they do not deal to any extent with structural detail, but rather with the so-called spirit that pervades them. The book ends in a note of high-flown, if somewhat vague, idealism, which contrasts curiously with the rich and realistic detail of the rest. "Certainly there are many indications that a new German type is coming into being, a type which is working for the spiritual unity of the German race. . . . Before this new spirit can achieve greatness, it must await the aristocracy of the future . . . and are there not already signs of such a race, a type without the military stiffness and dry pedantry of the past, a type which has won free of the trammels of mechanization and specialization, which is able to appreciate human values at their true worth?" These sentences are a striking expression of the undeveloped mystery of German "national character." Only the future can show whether such a collective character can still unfold itself within the boundaries of a national being, or whether it is already too late for such a development.—C. J. F.

France Under the Bourbon Restoration, by Frederick B. Artz (pp. xii, 444), which the Harvard University Press has just published, fills a need which has been keenly felt by all students of nineteenth-century France. No comprehensive modern treatment of this important period in recent French history existed from which an insight might be derived concerning the various currents of thought and action in the period during which the bases of French parliamentary government were forged out of the inadequate materials of the Charter of 1814. To be sure, Barthélemy's admirable study gave a masterly analysis of the purely political and constitutional aspects of this development, but for the person not familiar with the *milieu* and the *mis-en-scène* of that period, such a limited analysis must necessarily remain somewhat unconvincing. It is exactly this knowledge of the *milieu* and the *mis-en-scène* which the present author succeeds in creating for the reader. The five chapters on "The Beginnings of a Modern Parliamentary Government in France," "The Clerical Question," "The Rise of a

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New Economic Order," "The State of Society," and "The Romantic Revolt" bristle with detailed descriptive material, as well as with pointed evaluations of trends, which are suggestive even where one might disagree with the author's opinion. In the first chapter, which is particularly important to political scientists, the following minor errors and misstatements may be noted. In view of the constitutional order prevailing in Switzerland, the German city states, and kingdom of Württemberg, it cannot be admitted that "the Charter was the most liberal instrument of government that existed anywhere on the continent" (p. 41). The generalization that "inertia and timidity" are "the habitual faults of all moderates" (p. 56) seems rather questionable. The analysis of the representative nature of the French parliament in this period (p. 81) is written without sufficient knowledge of the considerable progress which has been made in recent years in the analysis of representation and public opinion by political scientists. No reference is found at all in this chapter to the importance of the Charter of 1814 as a model for other European states. The critique of the charter in terms of the "contradictions" which it presumably contains (pp. 39 ff) is too abstractly logical, and fails to take account of the fact that effective, though dilatory, compromises by contradictory formulae are incident to all successful constitution-making. For example, the provision which empowered the king to make "ordinances for the execution of the laws" is pointed to as contradicting the notion that the chambers are the law-making body. If that is a contradiction, then contradictions are the essence of a constitution! But Professor Artz is not a political scientist; he is a historian. And from the point of view of the major focus of his discussion, flaws like these are of minor importance. Taken as a whole, as a panorama of France under the Bourbon Restoration, the book is wholly admirable. Its value is increased by an excellent critically selected bibliography.—C. J. F.

The compelling search for the true path to the heart of Soviet economic mysteries, which lures an increasing host of literary explorers, recalls to mind the historical fact that Columbus discovered America while seeking a new passage to India. It might well be that some one writer, by his very originality of approach to Soviet problems, will discover a new continent of ideas of immense value to the wondering world. As the search goes on, however, it becomes increasingly apparent that writers on Soviet affairs achieve originality only by rearrangement of the known facts so as to reveal previously unconsidered relation-

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ships and a new synthesis. Thus Ethan T. Colton, in *The X Y Z of Communism* (Macmillan Company, pp. xiv, 423), presents the Soviet problem as a mathematical equation. At the head of each chapter the author poses one of the important premises, class war, dictatorship of the proletariat, utter incompatibility of communism and religion, etc., and then proceeds to analyze factually the results obtained in thirteen years. The theories expounded in *The A B C of Communism,* written by Bukharin and Preobrazhensky in 1919, are posed against the revealed consequences of application; the system is tested against itself. This formula has the merit of being more original and logical than most. Mr. Colton's book is a compendium, drawn largely from official sources, which should have considerable value to the student. Particularly interesting are the chapters on religion, the Red Empire, and the world revolution. The author does not hesitate to summarize the work of the G.P.U. (secret police), and to expose the methods of the Comintern in promoting revolution abroad. While not offering new material, he has managed to crowd a great amount of properly coördinated information into a small space. The remarkable success of *These Russians,* by William C. White (Charles Scribner's Sons, pp. 376), is proof that ultimate interest must be focused, not on the Soviet system as a possible solution for economic ills, but on the human specimens in the laboratory. The author's seventeen character types reveal, in their own words, what the revolution means to them in food, clothing, shelter, and work—eloquent terms understood by the whole world. Mr. White rescues man from under the pile of collective institutions, and shows him suffering or rejoicing as an individual, despite the Communist class dogma. By emphasizing this perspective, and making man the center of reference, he performs a real service.—B. C. H.

The political genius of a people is reflected in the institutions of local government as well as in imperial organization and administration. *Russian Local Government During the War and the Union of Zemstvos,* by Tikhon J. Polner in collaboration with Prince Vladimir Oblensky and Sergius P. Turin, with an Introduction by Prince George E. Lvov (a volume of the *Economic and Social History of the World War, Russian Series;* Yale University Press, pp. xv., 317), traces the development of non-urban institutions of local government in Russia from 1851 and the reform of 1864 through the crises and devastating destruction of the World War and the Russian Revolution to the end of zemstvo institutions in 1919. It is an epic tale, a record of political experimentation projected on a scale of such magnitude as to challenge

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the imagination of all students of political phenomena. The evolution of the zemstvos prior to the World War epitomizes the long struggle of the Russian people for self-government and gives assurance as to the ultimate character of Russian political institutions. Yet it is evident that these institutions of local government were still so involved in the fabric of Russian autocracy, and were still so tender, that they could not survive the impact of the war and the revolution. It is common knowledge among those who were in Russia during the war that, but for the supporting activities of the zemstvos in hospitalization, care of families of mobilized men and of refugees, assistance to agriculture, army supply and welfare, industrial organization and activity, Russia would have been out of the war long before she was. Under the forced draught of its war responsibilities, the zemstvos had become so vital to the war program of the Russian state that by July, 1915, it had become a veritable state within a state. In conjunction with the representatives of commerce and industry, the Union of Zemstvos undertook to repair the deficiencies in the technical equipment of the Russian armies. But the exhaustion begotten by war, defeat, and revolution outran the amazing energy and resourcefulness of the zemstvos, and their dissolution was completed by the soviet authorities. Even so, no student of Russia can ignore the potentialities for state-building which are revealed in the Russian character during the zemstvos' experience. To bring together the material in this book from sources outside of Russia and to interpret it with the detachment which this work exhibits has obviously involved careful and patient labor and scholarship of high order.—R. M. S.

It has been said that only three Frenchmen have understood England—two Protestants and a Jew. Professor André Siegfried is one of the Protestants, and he has an amazing knowledge of some sides of English life, as previous works have shown. His latest study, *England's Crisis* (Harcourt, Brace and Co., pp. 317), is, however, much below his own high standard. It appears to have been written in some haste for a wider public, and contains a number of general statements which are more sensational than accurate. As regards the economic aspect of the crisis, Professor Siegfried emphasizes the well-known facts of the decline of the heavy industries, but there is no very deep analysis of causes. The author seems to endorse the very questionable assumption that only a lower standard of living for British workmen can enable British manufactures to regain their old position in the world. For this

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reason, the book has been well received in certain circles in Britain. Professor Siegfried is proud of the work of reconstruction in France and exaggerates the energy and culture of French industrialists at the expense of their English competitors. There is, of course, much sound argument in the book; but the whole picture is too sensational and highly colored to carry conviction. On political topics, the book is even more superficial.—C. K. W.

A new and revised edition of Professor William B. Munro's *The Governments of Europe* (pp. xi, 841) has been issued by the Macmillan Company. Many slight changes have been made throughout in order to bring the text up to date. The chapters on Russia and on Italy have been rewritten, and much new material has been added. Interesting revisions have been made in the discussion of Germany, and a new chapter is included on the "government at work." "The League of Nations as a Scheme of Government" marks another excellent addition, and serves as the concluding chapter. Professor Munro has likewise published a third edition of *The Government of the United States* (The Macmillan Company, pp. ix, 795). The author states that "some new chapters have been added; the arrangement of the subject-matter has been changed; the emphasis has been somewhat shifted in keeping with the political developments of the past five years; and new bibliographical references have been provided. About the only thing that has not undergone a change is my conception of what a textbook ought to be." The most striking single changes are the new introductory and concluding portions which deal respectively with "The Study of Government" and "The American Philosophy of Government."—E. P. H.

Of the several books that have appeared on the subject, the recent volume by Edouard Herriot on *The United States of Europe* (pp. 330) is perhaps the best. It is published by the Viking Press. While the book is a plea for European coöperation, its tone is expository and analytic. The author takes the view that such a union is rendered necessary "by the laws of economic evolution, by industrial amalgamations, and by the necessity of defending the European market." He advocates a flexible union of the nations on absolutely equal terms and within the framework of the League. The proposal is considered with reference to its numerous implications—historical, political, economic, and cultural. M. Herriot's experience in French politics and business lend his words authority, and his restraint and sense of proportion in presenting his case make for a sympathetic reading of the volume.

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Martin MacLaughlin, who has been a visiting professor from England at Rollins College during the past year, has written an interesting small book on *Newest Europe* (Longmans, Green and Co., pp. vii, 214), which explains for the general reader the chief political movements of the new and reconstructed states of modern Europe, with special emphasis on Germany, Italy, Russia, Poland, Central Europe, and the Baltic states. England, Sweden, Holland, and Portugal are omitted, and France is treated very briefly. The book is written in a readable style, is free from personal bias or propaganda so evident in many books on similar subjects, and is more optimistic than most writings on post-war Europe. The book should make interesting summer reading for the busy person who wishes a review of recent developments in Europe.

Schemes for the Federation of the British Empire, by Seymour Ching-Yuan Cheng (Columbia University Press, pp. 313), is an attempt to bring together under one cover all the proposals for imperial federation that have been made since 1850. The greater part of the book is devoted to an objective detailed analysis, classification, and comparison of these different schemes. In a concluding chapter, the author suggests that the essential imperial problems are those of control of foreign policy, the working out of a system of defense, and the attainment of true equality of status for the Dominions. The solution of these problems, however, according to Dr. Cheng, is to be found, not in federation, which he declares to be an impossibility, but in a further development of the present consultative mechanisms and in recognition of the independent right of neutrality for the Dominions.—R. E.

Professor Edward P. Cheyney first presented *Modern English Reform* in a course of Lowell Lectures. The volume is now published by the University of Pennsylvania Press (pp. vii, 223). Conditions in England of 1800 are depicted as a background for an account of the early reformers and their methods. The removal of legislative restrictions characterized the first part of the century, and thus cleared the way for more constructive measures. Along with this progression, the author traces the rise of the working classes to political prominence and outlines the development of British socialism. The material is handled with penetration and charm. The real genesis of reform legislation is made clear, and the social forces at work are linked up with their political effects.—E. P. H.

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Of the many recent books on Russia, the little volume by M. Ilin entitled *New Russia's Primer* (Houghton Mifflin Co., pp. xiii, 162) stands out as one of peculiar fascination. This story of the Five Year Plan, written for use in the schools and designed for children from twelve to fourteen years of age, presents with unique vividness the spirit of the new soviet order. The simplicity and naïvete of the presentation combine with the enthusiasm and imagination of the author in making the book a delightful bit of propaganda.

The Colonial Land and Emigration Commission, by Fred H. Hitchins (University of Pennsylvania Press, pp. xviii, 344), is a useful and well-documented study of an imperial agency once of considerable importance but now almost forgotten. Brought into existence largely to meet the demands of Wakefield and the colonial reformers, the commission served, according to the author, as the economic bureau of the Colonial Office for a period of nearly forty years, dealing not only with emigration from the United Kingdom to the colonies but also with the imperial labor supply derived from Africa, India, and China.

General Charles H. Sherrill, in *Bismarck and Mussolini* (pp. ix, 304), draws a comparison between these two leaders by selecting twenty-five parallel episodes from the lives of each. He sets out to prove that the two men are much alike, and naturally comes to the conclusion that Mussolini is properly to be classed with Bismarck. If the argument is obvious, the method is entirely uncritical and the style banal. Moreover, the author's insistence upon his personal acquaintance with celebrities introduces trivialities which scarcely seem in good taste.

The Separation of Executive and Judicial Powers in British India, by Naresh Chandra Roy (Sarkar and Sons, Calcutta, pp. 154), is an indictment of existing arrangements in British India under which, the author alleges, the judges are not only potentially but actually controlled by the executive. Though judicial independence was expected to flow from the reforms of 1919, nothing has happened; and the governments of all of the provinces are charged with deliberately shelving the matter on one pretext or another. The author does not content himself with criticism, but presents a concrete plan under which the desired reform could be realized with a minimum of disturbance to the administrative system generally.

Disillusioned India, by Dhan Gopal Mukerji (Dutton and Co., pp. 224), gives, on the whole, a one-sided account of the Indian situation

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from the point of view of the Indian extremists, paying scant attention to the moderate parties. The book is interesting as a psychological study if combined with an impartial and more detailed account. Several chapters deal with India's spiritual superiority to the West.

The Power of India, by Michael Pym (Putnam's, pp. 317), presents a vivid and interesting traveller's account of Indian life, based on the theory that in many respects Indian is superior to Western culture. On the whole, the chapters on political and economic conditions are superficial and misleading.

The Constitution of Northern Ireland (pp. 89), by Sir Arthur S. Quekett, is published by H. M. Stationery Office. This study is designed to supplement the Government of Ireland Act of 1920 and its amending enactments by reciting the evolution of the constitution to its present form of operation and by describing the manner of its actual working.

INTERNATIONAL LAW AND RELATIONS

Mr. Walter Simons, for a time acting president of the German Republic and former chief-justice of the Supreme Federal Court, as well as a student of jurisprudence, presented to the Williamstown Institute of Politics in 1930 views on forces leading to and resulting from the World War, referring particularly to the changing attitude toward international law and world organization. His lectures appear in a small volume, *The Evolution of International Public Law in Europe since Grotius* (Yale University Press, pp. 146). Properly emphasizing the contributions of Grotius, Mr. Simons traces the development of the conception of state sovereignty. He looks with some degree of hopefulness to the organizations springing into existence since the World War and the attempts at limitation of armament as possible substitutes for force. The international complications resulting from the Covenant of the League of Nations and the Briand-Kellogg Pact may be as perplexing as those arising from alliances and balance of power. As the conception of war changes, the conception of neutrality changes. The idea of neutrality, though of slow growth, Mr. Simons regards as of importance still. Neutralization gives rise to other problems, as seen in the case of the Wimbleton relating to the Kiel Canal. Absolutism in the strict sense Mr. Simons finds out of accord with modern international law. State responsibility, mediation, arbitration, and the like are not easily reconcilable with absolutism, and codification of inter-

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national law would be futile if absolutism prevailed. Intervention is always a subject of much difference of opinion, and when combined with problems of European minorities becomes to a degree dangerous. In the consideration of nationality and minorities, Mr. Simons says: "I see no greater possibility of a good and durable understanding between Germany and Poland than there was between France and Germany during the time when the question of Alsace and Lorraine was open because France could not forget that Germany had taken these provinces by a victorious war and without asking the population." Mr. Simons sees hope for international well-being in the development of the spirit of coöperation and the recognition of the jurisdiction of an international court.—G. G. W.

British Policy and Canada, 1774-1791; A Study in Eighteenth Century Trade Policy, by Gerald S. Graham (Longmans, Green & Co., pp. xii, 161), is No. 4 in the Imperial Studies Series edited by Professor A. P. Newton, of the University of London, and is a detailed study of the part played by Canada in the tangled relations of British business and politics during the period just after the loss of the American colonies. The main theme is the effort which was made to fit Canada into the scheme of the Navigation System. With the loss of the American colonies, the economic balance of the old Empire was upset. The British West Indies had become dependent for food supplies and lumber upon the New England and Middle states. Shelburne contemplated keeping up these trade relations with the new United States, which would have meant admitting an alien power within the circle of the navigation laws. He hoped to develop a great export of English manufactures if free trade could be maintained with the republic. Hence he was careless about maintaining a boundary between Canada and the States which would protect the Canadian fur trade, because he was looking for a much greater trade in the ultimate future. But there was a revolt against these free-trade ideas among the believers in the navigation laws; and, instead of applying Shelburne's ideas, an effort was made to use Canada as a substitute for New England as the source of supplies for the West Indies. This failed almost entirely, because the new loyalist settlements in Canada and Nova Scotia were not able to produce a steady surplus of supplies each year and never came within reach of producing enough to fill West Indian needs. Similarly, the effort to use the new colony for the production of hemp, flax, and timber for the British navy was largely a failure. Most in-

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teresting of all, the idea that Canada might become the "vestibule of commerce" for a trade with the future population of the Mississippi Valley also broke down. "British statesmen had dreamed a dream, as glorious and as visionary as any which had gripped La Salle or the Grand Monarque. In the heart of North America, a new Anglo-Saxon nation should arise, linked to its mother country through Canada, by the strong, far-reaching arm of British commerce. It was a dim fantasy created in the smoke of an awakening industrial England." A good deal of the material used by Mr. Graham in this work is already familiar to students of the period. What is new and most valuable is the systematic study of the period from the point of view of Canada and its place in the Navigation System.—F. H. U.

It would be difficult to get along without the useful annual surveys of developments at Geneva by Dr. Denys P. Myers, issued by the World Peace Foundation (Boston) under the title *Handbook of the League of Nations*. The latest issue summarizes League developments since 1920 and includes the draft convention for disarmament. There is no single volume which in such brief compass provides so adequate an account of the structure, workings, and results of the League's first decade. But this year's issue is notable for a brief introduction on "What the League of Nations Is," in which Dr. Myers presents some of his own conclusions (that carry forward his discussion in the ninth year-book) on the effect of the League upon general international relations. He points out the effectiveness of the conference method in matters of common interest but frequently of diverse policy. The Assembly, in fact has more than once been utilized as an international conference for drafting treaties or other agreements. The very fact that it meets annually makes for continuity. But the point applies to other conferences and committees as well. "Decisions may be taken piecemeal on account of the continuity of procedure, and this possibility has proved digesting in advance of decisions is a regular practice. Decisions themselves usually represent the common thread of agreement as shown by the facts. A measure of agreement reached customarily opens vistas of an additional consensus, following further experience and investigation. Almost every field of agreement displays interlocking features. . . The background of a permanent and continuous machine frequently enables the conference to reach an agreement on part of the subject, while remitting troublesome phases of it to further study."—P. B.

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An essential prerequisite for the intelligent study of the vast field of international relations is the existence of a large number of monographs on particular areas or problems. Many are the publicists who are willing to write broadly on the whole sphere, but there are all too few who are both qualified and willing to undertake the more laborious task of mastering some one lesser aspect. *The International City of Tangier* (Stanford University Press, pp. xiii, 323), by Graham H. Stuart, is a welcome addition to this latter type of literature. A very thorny problem which has vexed the statesmen of Europe for centuries is here competently examined, not only in its narrower administrative aspects, but also historically in terms of the general European and world background which lends it peculiar significance. Since the system established in Tangier by the Revised Statute has been in operation only a brief time, Professor Stuart has found it impossible to do much more than suggest the probable results of the new international régime. But he has succeeded admirably in demonstrating that such administration at the present day, at least as far as troubled areas are concerned, is fundamentally at the mercy of the play of world politics. The usefulness of the volume to the student is considerably enhanced by the inclusion in an appendix of the essential documents concerning the present status of Tangier.—R. E.

In the preface to *Political Consequences of the Great War* (Home University Library, Henry Holt and Co., pp. 252), Ramsay Muir warns the reader that the book is to be taken, not as an authoritative textbook, but as an expression of his personal views of a rapidly changing world. From the whirlwind, as he terms it, he selects as the central points of his discussion the British Empire, the progress of democracy and internationalism, and the relation between Europe, on one hand, and the Moslem world, China, and India, on the other. Very wisely, he refrains, as a rule, from attempting to play the rôle of prophet in these varied if closely interconnected spheres, and confines himself to suggesting the outstanding problems and commenting in brief on the tentative solutions which the post-war years have brought forth. Throughout, he is insistent on the necessity of dealing with the modern world in terms of an internationalism which recognizes the diversity of nations but curbs a too parochially ardent nationalism.—R. E.

Information on the Reparation Settlement (London, George Allen and Unwin, Ltd., pp. 253) is the sixth in a most useful "informa-

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tion series" edited by John W. Wheeler Bennett. The present volume is issued in collaboration with Hugh Latimer; its sub-title, "The Background and History of the Young Plan and the Hague Agreements, 1929-30," sufficiently indicates its scope and purpose. As in the other volumes in the series, the authors give a detailed record of the development of the problem from Versailles to The Hague. Documentary material occupies about one-third of the volume, including the Young Plan and several documents from both Hague conferences, 1929 and 1930. There is a useful working bibliography of British official publications and of some of the more important secondary sources. The aim of the authors to present an objective factual account has been fulfilled admirably; the volume is a most useful reference work.—P. B.

There has just appeared another of the classics of international law published by the Carnegie Endowment for International Peace, *Elementorum Jurisprudentiae Universalis Libri Duo,* by Samuel Pufendorf (Vol. I, pp. xxvi, 376; Vol. II, pp. xxiii, 304.) The first volume is a photographic reproduction of the edition of 1672, and contains an excellent introduction in German by Professor Wehberg. The text, and also Professor Wehberg's introduction, is translated in the second volume. Professor W. A. Oldfather, of the University of Illinois, is the translator of the text. It is of special value to have a satisfactory text and translation of this work of Pufendorf, which has not hitherto been easily accessible even in the original language.

The Martial Spirit; A Study of Our War with Spain, by Walter Millis (pp. 427), is published by Houghton Mifflin Company. The book is aptly named, for the author undertakes an examination of the factors and motives that brought on the conflict and succeeds in explaining the war in terms of private ambition, newspaper propaganda, synthetic war enthusiasm, and emotionalism. He does not deny the part that idealism played; he merely explains it. The military and naval engagements are well described, and with due regard to certain incidents that lent a comic opera aspect to the exploits. While Mr. Millis refuses to take the war itself too seriously, he does not fail to stress its far-reaching consequences for the United States as a world power. His volume is a valuable and highly readable case study of war with particular reference to national psychology and practical politics.—E. P. H.

Europe and the American Civil War (pp. xiii, 300) is written by Donaldson Jordan and Edwin J. Pratt and published by Houghton

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Mifflin Company. This study presents in a pleasing fashion and in a scholarly way the attitude of the publics in Europe toward the war between the states. The authors point out the substantial interests abroad that were affected by the conflict in this country and explain how the weight of liberal public opinion, particularly in Great Britain and France, prevented intervention. A strong anti-Northern feeling existed, and the temptation to interfere was great. The contest of opinion was keen in Europe, but the cause of the North won an earlier and more decisive victory there than it did at home. The authors have approached diplomatic history from a new angle, and one that well merited their very successful investigation.

George Henry Payne, in *England; Her Treatment of America* (Sears Publishing Company, pp. xx, 323), sets out to sustain the thesis that throughout our history the British ruling class has viewed this country with "jealousy and contempt." He has arrayed all the incidents that he can discover to prove his point, ranging from Revolutionary times down to the present, and depending upon English writers for evidence. The work is a brief, rather than a scholarly, inquiry. The volume is an excellent example of how international affairs should *not* be treated.—E. P. H.

In *L'Union Européenne* (Librairie Delagrave, pp. 334), MM. B. Mirkine-Guetzevitch and Georges Scelle have assembled all of the principal documents relating to the proposed establishment of a European federal union—chiefly speeches on the subject delivered in the tenth and eleventh sessions of the Assembly of the League, together with M. Briand's Memorandum and the official replies of twenty-six governments. A brief preface presents the setting for the project sympathetically.

POLITICAL THEORY AND MISCELLANEOUS

Ernest Barker's *A Huguenot Theory of Politics: The Vindiciae contra Tyrannos* has been reprinted from the Proceedings of the Huguenot Society of London (Vol. XIV, No. 1, pp. 25). In this short address, but one very rich in ideas and suggestions, Professor Barker gives strong arguments for the repudiation of the hypothesis that Mornay was the author of the *Vindiciae,* and equally strong arguments for the acceptance of Languet as the author of this influential book. At the same time, he gives an admirably vivid picture of the conditions which fortified Catholic reaction against the Huguenots. According

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to Barker, the massacre of St. Batholomews's Day was a popular massacre, a national massacre, because it was in accordance with the fundamental tendency of the epoch toward French unity. Furthermore, the author presents a thoroughgoing analysis of the main philosophy of the *Vindiciae,* the cornerstones of which are the theory of contract, of trusteeship, of resistance, and of federalism. In another part of his essay, he shows the influence of Languet on Althusius and Locke. The principles which were "alien to the political unitarianism of France found a more congenial home in Holland." Here Locke was manifestly influenced by the Huguenot atmosphere; and Althusius, though a German, lived in Friesland on the borders of Holland. One of the most interesting features of Professor Barker's essay is the emphasis which he lays on the formative force, not so much of the Huguenot *theory,* but of the Huguenot *ideology,* upon progressive spirit in Europe and America.—O. J.

Everyone interested in the history of the *Risorgimento,* especially as regards the evolution of political ideas, will be grateful to Alessandro Levi for his study, *Il Positivismo Politico di Carlo Cattaneo* (Bari: Laterza & Figli, pp. xvi, 198). The book is a comprehensive and illuminating analysis of the social and political work of an important and original thinker who, in the universality of his outlook and the nobility of his moral tone, approaches his great contemporary, Mazzini. But whereas the rather mystical and sentimental thinking of Mazzini culminated in the idea of a strong Italian unity, the matter of fact, analytical, and historical frame of mind of Cattaneo was centered on the idea of an Italian federalism. Though the time was not yet ripe for this broad synthesis of individual and political liberty against the mechanical centralization of the time, Cattaneo stated important problems and found fertile solution, not only for his fatherland, but for his vision of a United States of Europe. The student interested in the history of federalism will find in Professor Levi the most expert and enthusiastic guide for the reconstruction of the thought of his hero. A comprehensive bibliography of the works of Cattaneo and those which treat of him augments the great value of the book.—O. J.

Essays in Colonial History; Presented to Charles McLean Andrews by his Students is a worthy tribute to the scholarship and teaching services of Professor Andrews. With the exception of the last essay, which treats the subsequent influence of ideas developed at the end

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of the colonial period, all of the essays deal with the colonial period. Otherwise there is no attempt to confine them to a particular subject-matter. Six of the twelve deal with problems which are primarily economic: land tenure in the charters and in New Netherland, taxation in the Connecticut towns, the economic causes of the rise of Baltimore, the four New York companies, and the settlement and financing of the West Indies. One deals with the impressment of seamen, and two are studies of important figures of the period, the Earl of Stirling and Jonathan Belcher. The essays which will probably be of greatest interest to the student of colonial government are those by Mary P. Clarke on parliamentary privilege in the colonies, L. W. Labaree on the early careers of the royal governors, and B. W. Bond on the reception of certain political ideals of the colonial and Revolutionary periods in the Old Northwest. These three, and particularly the illuminating essay by Professor Labaree, are real contributions to the body of secondary material dealing with colonial politics.—B. F. W.

One of the most significant experiments in the attempt to control raw materials was the recent ill-fated Stevenson plan for restricting the exportation of rubber from the British possessions in the Middle East. In *Government Control of Crude Rubber* (Princeton University Press, pp. 235), Professor Charles R. Whittlesey has made an exhaustive analysis of the conditions that led to control, the structure of the plan, and the effects of its operation. The result is a compact and definitive piece of research. The unfortunate position of the industry from 1920 to 1922, combined, perhaps, with the natural desire of English rubber share-holders to improve the standing of their holdings, led to the adoption of a plan whereby output was to be restricted to a percentage of standard production. A sliding scale was devised in accordance with which the quota was to be increased as prices rose, and *vice versa*. The plan operated with considerable success until 1924-25, when prices mounted rapidly. The sliding scale arrangement proved to be an inadequate check. It was during this period of rising prices that much unpleasantness occurred between England and the United States, the latter, of course, being the largest rubber consumer in the world. The act was repealed in 1928. The conclusion of the author is that the effect of the plan was generally harmful, even with respect to the producers. Although he is obviously pessimistic as to the efficacy of any governmental control, one wonders what the results might have been had the influence of the British Rubber Growers' Associa-

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tion been less decisive in the administration of the plan, or had there been international control.—H. L. E.

Under the title *Dictatorship on Trial* (Harcourt, Brace and Co., pp. 390), Otto Forst de Battaglia has gathered together a somewhat miscellaneous collection of essays on dictatorship contributed by a number of Europeans of note. Although the editor himself, in the concluding essay, holds that dictatorship has justified itself for certain countries as a means of meeting grievous situations, there are others in the volume to gainsay him. Prof. Einstein, for example, in two brief sentences, asserts that science requires freedom of speech, while "a dictatorship means muzzles all around." The first part of the book is composed of essays on the relationship of dictatorship to other factors, including a contribution by Maurice Bedel on "Love and Dictatorship;" while the second consists of an examination of particular countries and their dictators. If Austria is excluded from the list of countries here discussed, the fact cannot be laid at the door of Raimund Gunther, who, in *Diktatur oder Untergang* (Verlag Carl Konegen, Wien, pp. 150), makes an impassioned plea for a dictator who would put an end to the party strife which the author believes to be destroying the new republic.—R. E.

Professor Harold J. Laski's visit to the United States as lecturer at Yale during the academic year 1930-31 has been marked by a republication of his stimulating and thought-provoking book, *The Foundations of Sovereignty, and Other Essays* (Yale University Press, pp. xi, 317), in which the author presented his case for the pluralistic state. The first edition of the work, which appeared in 1921, was reviewed in this journal for November, 1921, by Professor Walter J. Shepard (Vol. XV, No. 4). It is also of interest to note that the reprint of Professor Laski's earlier work comes at about the same time as the appearance of two new books from his facile pen, both of which are reviewed in this issue of the *Review,* and in one of which (*Politics*) there are discernible some slight modifications or refinements of his earlier views.

Under the title *Bureaucracy Triumphant* (Oxford University Press, pp. 148), Mr. C. K. Allen has reprinted four articles, chiefly from the *Law Quarterly Review,* dealing with the recent development of administrative law in England. The author recognizes the inevitability of a highly-developed system of administrative law under modern con-

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ditions, but stresses the evils of bureaucratic arbitrariness which, he thinks, have grown up too fast along with the growth of administrative law. He reproves the complacency concerning these developments of the late Dr. F. J. Port in his *Administrative Law,* and commends the warning issued by Lord Hewart in *The New Despotism.* The present volume forms a brief and convenient introduction to an important aspect of the general problem of administrative power and procedure in the modern state.—A. N. H.

Vittorio Alfieri, by Gaudence Megaro (Columbia University Press, pp. 175), is a distinctly suggestive addition to the literature of the early history of nationalism. The search for the elusive factors which combine obscurely to make up the more highly developed nationalism of our own day receives considerable aid from such biographical studies as this, dealing with the patriots of a day when nationalism existed only in rudimentary form. Clearly, the elements of modern nationalism are present in Alfieri; the essential motivating forces are at hand; but the form and channel which those forces should take are only dimly realized. Dr. Megaro's study is an intelligent and sympathetic analysis of a great writer who, a half-century before its realization, caught romantic and, often contradictory, glimpses of the vision that led Italy through Mazzini, Garibaldi, and Cavour to Mussolini.—R. E.

Reviving the title of Immanuel Kant's immortal treatise, Dr. Julius Moor tries in his recent book, *Zum Ewigen Frieden: Grundriss einer Philosophie des Pazifismus und des Anarchismus* (Leipzig: Felix Meiner, pp. 101), to invalidate the fundamental conclusion of the great philosopher, showing that the idea of an eternal peace is illogical in its foundation and shaky in its ethical basis. In doing this, Professor Moor makes his task too easy by identifying the present pacifist movement with one of its manifestations, the sentimental anarchism which believes that the destruction of all state authority and compulsion will eliminate both individual and collective struggles. Though the author does not do justice to the pacifist movement as a whole, his unusual power of analysis contributes to the clarification of certain important problems, so entirely neglected by the purely jural or sentimental approach to the elimination of war. At the same time, the book is an interesting document showing the present mentality of Hungary, which refuses any attempt for peace under the rule of alleged unjust peace treaties.—O. J.

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Kritik der Soziologie: Freiheit und Gleichheit als Ursprungsproblem der Soziologie, by Siegfried Landshur (München und Leipzig, Duncker und Humblot; pp. 159), is a refutation of the claim of a purely descriptive and objective sociology and a demonstration that all important sociological and political inquiries have always been determined by the problems and values of a given period. By an acute study of the work of the chief representatives of recent and contemporary German and social science, the author shows conclusively that none of them could avoid a certain *Problematik* given by the very trend of social evolution. Modern sociology was born of the dilemmas of our capitalistic civilization; however; the fundamental problems involved are not purely social or economic, but deeply rooted in the ideas of freedom and equality which originated in the German Christian civilization, developed through the law of nature, were reasserted by Rousseau and the French Revolution, and are still the main sources of modern socialism. In this way, the close and inseparable connection between sociological and political problems is forcefully demonstrated.—O. J.

An attractive volume, *A Quarter Century of Learning, 1904-1929, As Recorded in Lectures Delivered at Columbia University on the Occasion of the One Hundred and Seventy-fifth Anniversary of its Founding* (Columbia University Press, 1931, pp. 380), records the progress of the principal branches of learning recognized in the universities, as viewed by leading members of the Columbia faculty. "Government" is in the competent hands of Dean McBain, who has written interestingly of matters with which the students of that subject are specially concerned. He reveals a skeptical mind with respect to both the democratic dogmas of conventional American political education and the new methodology, the psychological and statistical approaches, of the modernist schools of political science.—A. N. H.

Government; A Phase of Social Organization (Lehigh University, pp. 112), by E. B. Schulz, is an attempt to reëxamine the fundamental concepts of political science in the light of pluralistic and sociological criticisms of current doctrines. Starting from the interests of individuals and the relationships which those interests bring about, the author works out an elaborate terminology and system of classification which, it is suggested, should replace the more orthodox versions. It may be doubted whether a very substantial improvement has been effected. The customary scholarly apparatus occasionally appears re-

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duced to absurdity, as in the instance when the reader is referred by a footnote to the whole of Maitland's *Constitutional History of England* and Marriott's *English Political Institutions* in support of the bare statement that Great Britain's present governmental system is not the same as that operating in 1690.—R. E.

Too Much Government (The Vanguard Press, pp. 266), by Charles Erskine Scott Wood, is the vehement protest of a dogmatic individualist against political control by an economic oligarchy. "Government is the corporate name for the dominant few who own the wealth of the planet and of society, and so own and exploit the bodies and souls of the people. Constant rebellion is the only safety, and a true equality, economic and political, is the only goal." The book is notable for its fervor rather than for the originality of its argument.—E. P. H.

A. Wyatt Tilby has written an admirable biography entitled *Lord John Russell; A Study in Civil and Religious Liberty* (pp. xv, 287). Richard R. Smith is the publisher. Russell is presented as a clear, if limited, thinker who believed in principle rather than in compromise, and one who said exactly what he meant and meant exactly what he said. He is pictured as the acknowledged public leader of all who believed in constitutional government, free national parliaments, and an open franchise. The father of the Reform Bill had his limitations and not a few weaknesses, but he was not given to equivocation. Mr. Tilby explains and evaluates his subject with skill, and writes in a witty and easy fashion that is incisive and never smart. Lord John Russell emerges as a living figure: "the perfect Whig seeking liberty as an end rather than as a means."—E. P. H.

The Macmillan Company has published *A History of Socialism* (pp. viii, 328), by S. F. Markham. The author has made unrestricted use of Thomas Kirkup's *History of Socialism*, the present volume, however, being a general survey that comes down to date. The treatment is necessarily cursory; Karl Marx, for example, is disposed of in twenty-five pages. The work serves as a convenient outline of the course that socialism since its beginnings has taken in the nations of the world.

Under the title *Americans* (Oxford University Press, pp. 148), Salvador de Madariaga has published a collection of light and sprightly little essays which first appeared in various magazines here and in Great Britain. In an informal and often humorous vein, he discusses

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a variety of topics such as the United States of Europe, the "I'm Alone" case, the nordic myth, free trade, Senator Borah, and world government. While the style of presentation is none too serious, the barb of the author's wit frequently drives home his point.

"Gimme," or How Politicians Get Rich (The Vanguard Press, pp. 298), is written by Emanuel H. Lavine, the New York police reporter who recently published a volume dealing with the "third degree." The present work is a running account of the various ways and means of political graft, especially as observed by the author in Manhattan. The volume serves to present the contemporary version of the same old sordid tale of dishonesty and injustice in politics. Mr. Lavine has compiled specific incidents and catalogued them within the covers of a book.

Encyclopedia of Banking and Finance, by Glenn G. Munn (Bankers Publishing Co., New York, pp. 765) is a third revised edition of the first complete reference work on the subject of which it treats. Many of the 3,400 titles are only definitions or very brief statements of fact, but others are substantial articles, sometimes accompanied by bibliographies and full texts of statutes. Students of public finance will find the volume useful.

Students' Attitudes; A Report of the Syracuse University Reaction Study (Craftsman Press, Syracuse, pp. 408), by Daniel Katz and Floyd H. Allport, is a volume of large general interest, but will perhaps attract the attention of the political scientist, as such, only because of a single chapter on the technique of attitude measurement.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY EARL W. CRECRAFT
University of Akron

POLITICAL PHILOSOPHY AND PSYCHOLOGY

David M. Amacker; A.B., Princeton, 1917; A.B., 1922; A.M., Oxon, 1927. The Impairment of the Theory of External Sovereignty. *Columbia.*

Norman Wood Beck; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago.*

Philip W. Buck; A.B., Idaho, 1923. The Relations Between Political and Economic Thought. *California.*

Hyman E. Cohen; Ph.B., Chicago, 1928. History of the Theory of Sovereignty Since 1900. *Chicago.*

Thomas I. Cook; B.Sc., London School of Economics, 1928. Political Obligation in Recent American Thought. *Columbia.*

Edward F. Dow; B.S., Bowdoin, 1925; A.M., Harvard, 1926. The Present Value of the City State Ideal. *Harvard.*

Grace Givin; A.B., Kansas, 1914; S.D., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago.*

Henry Janzen; A.B., Bluffton, 1927; A.M., Ohio State, 1929. The External Aspect of Sovereignty. *Ohio State.*

**Mary Z Johnson;* Ph.B., Chicago, 1924. Development of Democratic Theory Since 1848. *Chicago.*

James C. King; Measurable Conditions Favorable to the Development of Nationality. *Chicago.*

Marion W. Lewis; A.B., Rockford, 1928. Jane Addams; A Study in Leadership. *Chicago.*

Paul McKown; A.B., Princeton, 1920; A.M., Pennsylvania, 1928. The Political Theories of Woodrow Wilson. *Pennsylvania.*

Floyd L. Mulkey; A.B., Baker, 1925. Recent Theories of Representative Government. *Chicago.*

Ralph O. Nafziger; A.B., Wisconsin, 1921; A.M., Wisconsin, 1930. The Newspapers and Public Opinion in the United States Concerning the War in Europe, 1914-1917. *Wisconsin.*

Frances Newborg; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago.*

[1] Similar lists have been printed in the *Review* as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930).

Asterisks indicate dissertations completed during the past academic year or present summer.

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Paul A. Palmer; A.B., Bowdoin, 1927; A.M., Harvard, 1928. Concepts of Public Opinion in the History of Political Thought. *Harvard.*

Michael A. Perry; B.S., Pennsylvania, 1915; A.M., *ibid.*, 1920. Relation of the Motion Picture Industry to Public Opinion. *Pennsylvania.*

Lawrence Preuss; A.B., Michigan, 1927; A.M., *ibid.*, 1929. The Theoretical Basis of Diplomatic Immunities. *Michigan.*

Pearl Robertson; Ph.B., Chicago, 1923; A.M., *ibid.*, 1921. Grover Cleveland as a Political Leader. *Chicago.*

Helen M. Rocca; A.B., California, 1919; A.M., *ibid.*, 1921. The Political Ideas of Benjamin Disraeli. *Columbia.*

Anna Elizabeth Roth; Ph.B., Syracuse, 1909; A.M., Radcliffe, 1926. Virtual Representation. *Radcliffe.*

Elmer E. Schattschneider; A.B., Wisconsin, 1915; A.M., Pittsburgh, 1927. The Economic Basis of the Changing Democratic Attitude Toward the Tariff. *Columbia.*

Charles W. Smith, Jr.; A.B., Park College, 1925; A.M., Michigan, 1928. Roger B. Taney; A Study in Political Theory and Public Law. *Wisconsin.*

Ruth E. Wright; A.B., Middlebury, 1923; A.M., Vermont, 1929. The Nationalism of Alexander Hamilton and of Theodore Roosevelt; A Comparative Study. *Columbia.*

T. C. Wu; A.B., Kwang Hua University, 1929. Political Theories of Bertrand Russell and Norman Angell. *Johns Hopkins.*

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW

H. C. Atkiss; A.B., Antioch, 1927; A.M., Cincinnati, 1928. Coördination of National and State Agencies, with Particular Reference to the Federal Power Commission and State Public Utility Commissions. *Yale.*

**F. E. Ballard;* A.B., Millsaps, 1924; A.M., Vanderbilt, 1926. Political Ideas Revealed in the Supreme Court Opinions of John Marshall. *Iowa.*

R. R. Barlow; A.M., Illinois, 1929. The Problem of Public Information in the National Government. *Illinois.*

**George C. S. Benson;* A.B., Pomona, 1928; A.M., Illinois, 1929. The General Accounting Office. *Harvard.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

Paul Herman Buck; A.B., Ohio State, 1921; A.M., *ibid.*, 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*

Helen May Cory; A.B., Northwestern, 1925; A.M., 1927. Compulsory Arbitration. *Columbia.*

Willard B. Cowles; A.B., Columbia, 1928. Treaties as a Source of Local Law. *Columbia.*

Lawrence Cramer; A.B., Wisconsin, 1923; A.M., Columbia, 1926. Advisory Committees in Relation to Federal Administration. *Columbia.*

Royden Dangerfield; S.B., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

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Charles Edwin Davis; A.B., Texas, 1928; A.M., *ibid.*, 1929. The President's Conception of the Legislative Powers of the President's Office. *Yale.*

E. Foster Dowell; A.B., Johns Hopkins, 1929. The Veto Power of the President. *Johns Hopkins.*

**Donald M. DuShane;* A.B., Wabash, 1927; A.M., Columbia, 1930. American Naval Policy. *Columbia.*

**Hugh L. Elsbree;* A.B., Harvard, 1925; A.M., *ibid.*, 1929. The Regulation of Interstate Commerce in the Electric Power Industry. *Harvard.*

Brooks Emeny; A.B., Princeton, 1924. The Geographical Basis of American Foreign Policy. *Yale.*

Harold R. Enslow; A.B., Kansas, 1926; A.M., Illinois, 1927. Deductions from Federal Income Tax for State Income Taxes. *Pennsylvania.*

H. Schuyler Foster; S.B., Dartmouth, 1925. War News in Selected United States Newspapers, 1914-1918. *Chicago.*

Felipe Gamboa; A.B., Oregon, 1926; A.M., *ibid.*, 1927. The Political Policy of the United States in the Philippines. *California.*

Max Geller; A.B., College of the City of New York, 1919; LL.B., New York University, 1920; A.M., *ibid.*, 1927. Artificial Persons Under the Constitution of the United States. *New York.*

Charles E. Haines; A.B., Colorado; A.M., Columbia, 1927. The Supreme Court and the Anti-Trust Acts. *Harvard.*

William M. Hargrave; A.B., DePauw, 1928; A.M., Iowa, 1929. The Socialist Party and the American Party System. *Iowa.*

Laurence V. Howard; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*

Peyton Hurt; A.B., Idaho, 1926; A.M., California, 1929. The Know-Nothing Party. *California.*

Arthur James; A.B., Lebanon, 1911; A.M., Cincinnati, 1913; B.D., Yale, 1915. American Rule in Porto Rico. *Columbia.*

Alvin W. Johnson; A.B., Berrien Springs College, 1920; A.M., Michigan, 1923. Phases of the Present Status of Church and State in America. *Minnesota.*

Grace Johnson; A.B., Wells, 1919; A.M., George Washington, 1923. The Annexation of Hawaii. *American University.*

Howard P. Jones; B.Litt., Columbia, 1921. Contempt of Court and the Freedom of the Press. *Columbia.*

Leo Jones. The Separation of Powers in Relation to Administrative Law and Procedure. *California* (Los Angeles).

Joseph Kise; A.B., St. Olaf, 1916; A.M., Harvard, 1928. The Constitutional Doctrines of Harlan F. Stone. *Harvard.*

John Day Larkin; A.B., Berea, 1923; A.M., Chicago, 1925. The Administration of the Flexible Tariff. *Harvard.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin.*

Albert Lepawsky; Ph.B., Chicago, 1927. Courts in the Metropolitan Region of Chicago. *Chicago.*

Raymond Leydig; A.B., Kansas, 1925; A.M., Columbia, 1928. Federal Control of Radio. *Columbia.*

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Nelson Bernard Lisansky; A.B., Johns Hopkins, 1927. The Development of Law of Searches and Seizures. *Johns Hopkins.*

Vera MacLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Kenneth J. Martin; Ph.B., Denison University, 1927; A.M., Ohio State, 1929. Waiver of Jury Trial. *Chicago.*

Evalyn Armisted Maurer; A.B., Northwestern, 1927; A.M., *ibid.,* 1928. Governmental Regulation of the Interstate Distribution of Public Utility Products. *Northwestern.*

James D. McGill; A.B., Oberlin, 1920; A.M., *ibid.,* 1922. Religious Liberty and Equality in American Constitutional Law. *Cornell.*

Russell McInness; Ph.B., Brown, 1922; LL.B., New York Law School, 1925; A.M., Columbia, 1929. Administrative Control of Airplane Manufacture. *Columbia.*

John F. Miller; A.B., Illinois, 1929; A.M., 1930. Relations of the Federal Government with Municipalities, *Columbia.*

James R. Pennock; A.B., Swarthmore, 1927; A.M., Harvard, 1928. Federal Unemployment Policy. *Harvard.*

**Ernest R. Perkins;* A.B., Wesleyan, 1917; A.M., Clark, 1921. Development of the Colonial Policies of the United States. *Clark.*

Valdemer F. Peterson; A.B., Wayne State Teachers College, 1927; A.M., Nebraska, 1931. The Public Career of George W. Norris. *Nebraska.*

Louis N. Pollock; LL.B., New York Law School, 1923. Legislative Control of Foreign Relations. *Johns Hopkins.*

A. L. Powell; A.B., Illinois, 1929; A.M., *ibid.,* 1930. Taxation of Governmental Instrumentalities. *Illinois.*

Allen Thomas Price; Ph.B., Denison, 1916; A.M., Chicago, 1922. The Influence of the American Missionary Movement on American Diplomacy in China. *Harvard.*

Spencer Reed; Ph.B., Lafayette, 1919; A.M., American, 1928. The Federalist Party, 1789-1823. *American University.*

**George Clarence Robinson;* A.B., Wisconsin, 1916; A.M., Harvard, 1920. The Veto Power Since 1889. *Harvard.*

M. Louise Rutherford; LL.B., Temple, 1921; A.B., Pennsylvania, 1926; A.M., *ibid.,* 1930. The Influence of the Bar Upon Legislation. *Pennsylvania.*

Leon Sachs. The Writ of Certiorari in Administrative Law. *Johns Hopkins.*

Carroll K. Shaw; A.B., Oberlin, 1928; A.M., Syracuse, 1929. Administrative Areas as Used by the United States Government. *Illinois.*

Max A. Shepard; A.B., Ohio State, 1927; A.M., Harvard, 1928. The Development of the Idea of the Fundamental Law of the Constitution. *Harvard.*

George A. Shipman; A.B., Wesleyan, 1925; A.M., *ibid.,* 1926. The Constitutional Doctrines of Justice Stephen J. Field. *Cornell.*

Theodore Skinner. Administrative Discretion as it Affects Constitutional Rights. *New York University.*

Camden Strain; A.B., Washburn, 1925; A.M., Wisconsin, 1926. Finality of Extra-Judicial Interpretation of Constitutional Questions. *Wisconsin.*

I. H. Su; A.B., Wisconsin, 1926; A.M., Columbia, 1927. The Make-up of American Cabinets. *Columbia.*

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Harold Tascher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois.*

C. H. Tolbert; A.B., Texas, 1929; A.M., *ibid.*, 1930. Presidential Investigating Commissions. *Yale.*

Stanley Trefil; B.S., Northwestern, 1929. State Police Power in Interstate Commerce. *Northwestern.*

**Eleanor Tupper;* A.B., Brown, 1926; A.M., Clark, 1927. American Sentiment Toward Japan, 1904-1924. *Clark.*

K. C. Wang; A.B., Fuh-Tan University, 1926. The Removal of Public Officers. *Johns Hopkins.*

STATE AND LOCAL GOVERNMENT IN THE UNITED STATES

John R. Abersold; A.B., Pennsylvania, 1922; LL.B., *ibid.*, 1925; A.M., *ibid.*, 1929. Commercial Arbitration in Pennsylvania. *Pennsylvania.*

Ethan P. Allen; A.B., Colorado, 1929; A.M., Iowa, 1930. Legislative Control over Administrative Agencies in Iowa. *Iowa.*

Frederic C. Ault; A.B., Ohio State, 1928; A.M., *ibid.*, 1930; Labor Legislation and Administration in Missouri. *Washington University* (St. Louis).

E. Maxwell Benton; A.B., Washburn, 1929; A.M., Iowa, 1930. The Administration of Criminal Justice in Rock Island, Illinois. *Iowa.*

Frederick L. Bird; A.B., Lafayette, 1913; A.M., Columbia, 1921. Municipal Light and Power Plants in New York State. *Columbia.*

Hillman M. Bishop; A.B., Columbia, 1926. New York City Political Patronage. *Columbia.*

Helen Breese; A.B., Bucknell, 1927; A.M., *ibid.*, 1928. Public Service Commissions; The Attachment of Jurisdiction. *Syracuse.*

Henry G. Burke; LL.B., Maryland, 1927. Public Utility Regulation in Maryland. *Johns Hopkins.*

Glenn E. Callen; A.B., Wesleyan, 1919; A.M., Nebraska, 1921. The Administration of Nebraska Labor Laws. *Nebraska.*

Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. The Development of Criminal Law by Judicial Decision in Texas, 1890-1928. *Columbia.*

**Merritt Madison Chambers;* A.B., Ohio State, 1922; A.M., *ibid.*, 1927. The Structure and Legal Status of the Governing Boards of State Institutions of Higher Education in the United States. *Ohio State.*

Winston Crouch; A.B., Pomona College, 1929; A.M., Claremont College, 1930. State Subsidies to Local Units in California. *California.*

Lewis Danziger; LL.B., Maryland, 1929. Uniform State Laws in the United States. *Johns Hopkins.*

J. Murdock Dawley; A.B., Minnesota; LL.B., *ibid.;* A.M., *ibid.*, 1930. The Power of the Governor to Appoint and Remove State and Local Officers. *Minnesota.*

Earl Howard DeLong; B.S., Northwestern, 1929; A.M., Northwestern, 1930. The State-wide Coördination of Police Authorities in the United States. *Northwestern.*

Harold M. Dorr; A.B., Michigan, 1923; A.M., *ibid.*, 1928. The Constitutional History of Michigan. *Michigan.*

Lawrence Logan Durisch; LL.B., Nebraska, 1923; A.B., *ibid.*, 1927; A.M., *ibid.*, 1928. The Nebraska Railway Commission. *Chicago.*

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William H. Edwards; A.B., Ohio State 1923; A.M., *ibid.,* 1923. The Position of the Governor in Recent Administrative Reorganization in the States. *Ohio State.*

John North Edy; S.B., Missouri, 1925; A.M., California, 1926. Manual of Municipal Management. *Stanford.*

Rowland A. Egger; A.B., Southwestern, 1926; A.M., S.M.U., 1927. The Federated Region as a Solution of the Metropolitan Problem. *Michigan.*

Lavinia Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

James W. Errant; S.B., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago.*

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia.*

Sonya Forthal; A.B., Wisconsin, 1922; A.M., *ibid.,* 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago.*

Earl W. Garrett; S.B., Harvard, 1924. Discipline in the Chicago Police Department. *Chicago.*

Plato Lee Gettys; A.B., Oklahoma, 1919., A.M., *ibid.,* 1927. Torts and Liabilities of Cities. *Stanford.*

Victor Hunt Harding; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Direct Legislation in California. *Stanford.*

**Freeman H. Hart;* A.B., Washington and Lee, 1912; A.M., *ibid.,* 1917; A.M., Harvard, 1922. Federalism in Virginia, 1783-88, with Special Reference to the Valley. *Harvard.*

William Vernon Holloway; A.B., Southwestern University, 1925; A.M., Wisconsin, 1928. The Exercise of Legislative Powers by Administrative Bodies in State Governments. *Washington* (Seattle).

I. D. Hurwitz; LL.B., Maryland, 1928. Motor Vehicles, Traffic, and the Law, with Particular Reference to the State of Maryland. *Johns Hopkins.*

Randolph O. Huus; A.B., St. Olaf, 1916; A.M., Columbia, 1924. Municipal Playgrounds. *Syracuse.*

Rex M. Johnson; Personnel Administration in the State Service of Ohio. *Ohio State.*

Violet J. Johnson; A.B., Hamline, 1928; A.M., Minnesota, 1929. Occupational Opportunities for College and Professional School Graduates in the Public Service. *Minnesota.*

Harley Walter Kidder; A.B., Illinois, 1929; A.M., *ibid.,* 1929. The Prohibition Party of Vermont; A Study in Quantitative Analysis and Interpretation. *Illinois.*

David H. Kurtzman; B.S., Temple, 1930; A.M., Pennsylvania, 1931. The Division Leader in Philadelphia Party Organization.. *Pennsylvania.*

Angus MacKenzie Laird; A.B., Florida, 1927; A.M., *ibid.,* 1928. The Party System in Florida. *Chicago.*

W. Rolland Maddox; A.B., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. Municipal Home Rule in Ohio; An Evaluation. *Michigan.*

Cecil F. Marshall; A.B., Iowa, 1929; A.M., Iowa, 1930. The Administration of Criminal Justice in Davenport, Iowa. *Iowa.*

Roscoe C. Martin; A.B., Texas, 1924; A.M., *ibid.,* 1925. The Populist Movement in Texas. *Chicago.*

Charles E. Martz; A.B., Yale, 1915; A.M., *ibid.,* 1917. Ohio Politics from 1876 to 1900. *Harvard.*

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George H. McCaffrey; LL.B., Harvard, 1912; A.M., *ibid.,* 1913. The Government of Metropolitan Boston. *Harvard.*

C. McKensie; A.B., Dartmouth, 1920; A.M., Columbia, 1921. The New Hampshire Town. *Columbia.*

David G. Monroe; LL.B., Baldwin-Wallace, 1927. Police Organization in the Metropolitan Region of Chicago. *Chicago.*

William D. Moreland; A.B., Iowa, 1923; A.M., Iowa, 1930. The Administration of Criminal Justice in Moline, Illinois. *Iowa.*

Blake E. Nicholson; LL.B., George Washington, 1923; LL.M., *ibid.,* 1925; B.S., Pennsylvania, 1926. The Collection of Local Taxes in Pennsylvania. *Pennsylvania.*

**Spencer D. Parratt;* A.B., Utah, 1924. Organization of Governments in the Regional Area of Chicago. *Chicago.*

Henry C. Pepper; A.B., Missouri, 1922; A.M., Missouri, 1924. County Government in Colorado. *Iowa.*

Jewell C. Phillips; A.B., Oklahoma, 1921; A.M., *ibid.,* 1929. Operation of the City Manager Plan in Oklahoma. *Pennsylvania.*

S. C. E. Powers; A.B., Iowa State Teachers College, 1923; A.M., Iowa, 1928. The Office of Governor in Iowa. *Iowa.*

Leland Pritchard; Bus Regulation in New York State. *Syracuse.*

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